Office Supreme Court U. S.
FILED.
NOV 29 1887
JAMES H. McKENNEY.
CLERK.

No. 571.

In Supreme Court of the United States.

OCTOBER TERM, 1887.

JAMES REID STEWART, APPELLANT,

vs.

BRANCH T. MASTERSON, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

MOTION AND BRIEF OF APPELLEE.

S. S. HENKLE,
Counsel for Appellee.

Clarke & Courts, Stationers, Printers, Lithographers, Galveston

No. 571.

Supreme Court of the United States.

OCTOBER TERM, 1887.

JAMES REID STEWART, APPELLANT,

vs.

BRANCH T. MASTERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

EXTRACT FROM TRANSCRIPT OF RECORD.

DECREE.

At a regular term of the Circuit Court of the United States for the Western District of Texas, in the fifth circuit, held at the court house of said court in the city of San Antonio, on the 7th day of October, in the year of our Lord one thousand eight hundred and eighty-four,

JAMES REID STEWART

vs.

BRANCH T. MASTERSON ET AL.

No. 20. IN CHANCERY.

This cause having come on to be heard upon the bill of complaint and amended bill herein, and the demurrer

thereto of the defendant, Branch T. Masterson; and the argument of counsel thereupon being heard, it is the opinion of the court that the defendant's said demurrer is well taken and that the same should be sustained, unless the complainant should desire to retain that part of his said bill in which he seeks to recover compensation for improvements and amend the same as to that part, the allegations in the present bill being insufficient to maintain complainant's claim for improvements; and the complainant having declined to make such amendment and retain that part of his said bill, therefore, upon consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree, that the aforesaid demurrer of the said defendant Masterson, be and the same is hereby sustained, and that the complainant's bill of complaint as against the said Masterson be and the same is hereby dismissed, with costs to the said defendant to be taxed.

Whereupon the complainant in open court makes application for appeal to the Supreme Court, which application is hereby granted.

JAMES REID STEWART, APPELLANT,

AGAINST

BRANCH T. MASTERSON AND JAMES L. TAIT,
APPELLEES AND RESPONDENTS.

No. 20. APPEAL BOND.

Know all men by these presents that we, James Reid Stewart, of Glasgow, Scotland, as principal and appellant in above styled suit, and John Withers, of the county of Bexar, State of Texas, and John Buchanan, of the county

of Karnes, State of Texas, as sureties, are held and firmly bound unto Branch T. Masterson, of the county of Galveston and State of Texas, and James L. Tait, of Bexar county, said State, in the sum of two hundred dollars, to be paid to the said Branch T. Masterson and James L. Tait, their executors and administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals, dated this 10th day of October, 1885.

Whereas the above named James Reid Stewart has appealed to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit of the Circuit Court of the United States for the Western District of the State of Texas, sitting at San Antonio, in said State;

Now, therefore, the condition of this obligation is such that if the above named James Reid Stewart, appellant, shall prosecute his said appeal to effect and answer all costs, if he shall fail to make his plea good, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) JAMES REID STEWART,
By James Duryee Stevenson, his Attorney, and of Counsel for Appellant.

(Signed) JNO. WITHERS.

(Signed) JOHN BUCHANAN.

Sealed and delivered in presence of witness.

(Signed) WM. MARTIN.

Approved: E. B. TURNER, U. S. Judge.

Endorsed: Filed Oct. 10, 1885.

SUPREME COURT OF THE UNITED STATES.
JAMES REID STEWART, APPELLANT,
vs.
BRANCH T. MASTERSON AND JAMES L. TAIT, APPELLEES.
} CITATION.

By the Honorable E. B. Turner, holding the Circuit Court of the United States for the Western District of the State of Texas.

To Branch T. Masterson:

Whereas James Reid Stewart has lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the Western District of Texas, made in favor of you, Branch T. Masterson, and has filed the security as required by law; You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 13th day of October next, being the second Monday of October, A. D. 1886, to do and to receive what may appertain to parties to be done in the premises.

Given under my hand at the city of San Antonio, in the Western District of Texas, in the fifth circuit, this 2d day of November, in the year of our Lord one thousand eight hundred and eighty-five.

E. B. TURNER, U. S. Judge.

Attest: W. C. ROBARDS, Clerk. [Seal.]

Marshal's Return: Came to hand on the 2d day of November, A. D. 1885, and executed on the 17th day of February, A. D. 1886, by delivering to Branch T. Masterson, in person, a true and correct copy of this citation.

S. D. JACKMAN, U. S. Marshal,
By D. WEST, Deputy.

Endorsed: No. Supreme Court United States. James Reid Stewart vs. Branch T. Masterson et al. Citation. J. D. Stevenson, T. J. Devine and J. S. Carr, Solicitors for appellant.

Supreme Court of the United States.

JAMES REID STEWART, APPELLANT,

VS.

BRANCH T. MASTERSON, APPELLEE.

OCTOBER TERM, 1887.

No. 571.

MOTION TO DISMISS APPEAL.

The appellee moves to dismiss the appeal in the above cause for want of jurisdiction.

The facts, as shown by the accompanying extracts from the record, upon which the motion is based, are the following:

The final decree of the Circuit Court dismissing the bill was entered on the 7th day of....., 1884.

An appeal was prayed and allowed at the foot of the decree on the same day.

The appeal bond was executed, approved and filed October 10, 1885.

The citation was issued November 2, 1885, notifying the appellee to appear in the Supreme Court of the United States on the second Monday of October, 1886. It was served on the 17th day of February, 1886. (See return of Marshal.)

The transcript was filed in the clerk's office of this court June 11, 1886.

There was no subsequent allowance of appeal.

S. S. HENKLE,
Counsel for Appellee.

BRIEF.

The decree and allowance of appeal having been entered on the 7th of....., 1884, the appeal was to the October term of this court, 188 .

This court has many times decided that the appeal is to the next term after the allowance of the appeal.

If the appeal is not docketed at the first term of this court after it is taken, it becomes *void.*

True, a second appeal may be taken and allowed after the first has expired, which, in its turn, will expire if not docketed at the first term thereafter.

A citation issued and served after the expiration of the appeal is of no avail.

More than two years having elapsed since the decree was rendered, no new appeal can now be taken.

By reason of the failure of the appellant to docket his appeal in time, the court has no jurisdiction to entertain it.

The foregoing propositions will be found to be fully sustained by the following cases, which I have selected from the many decided by this court:

Castro vs. The United States, 3 Wall., 46. The decree was entered Nov. 23, 1859. On the 24th of January, 1860, an appeal was granted on the motion of the United States. This appeal seems to have been dismissed. On the 11th

of November, 1864, an appeal was allowed on the motion of the claimant, the then United States District Attorney being present in court. No citation was issued upon this appeal returnable to the next term of the court, nor was the record filed and the cause docketed during that term. On the 29th of May, 1865, however, a citation was issued returnable to the present term, and the service of the citation was acknowledged by the present District Attorney. The writ was returned and the record filed at the present term. The appeal was dismissed on motion.

Said the Chief Justice (p. 49): "The acts of Congress providing for and regulating appeals have been often under the consideration of this court, and it may now be regarded as settled that in the cases where appeals are allowed by the judiciary act of 1789, and the additional act of 1803, the writ of error, or the allowance of appeal, together with a copy of the record and the citation, when a citation is required, must be returned to the next term of this court after the writ is sued out or the appeal allowed, otherwise the writ of error, or the appeal, as the case may be, *will become void*, and the party desiring to invoke the appellate jurisdiction will be obliged to resort to a new writ or a new appeal." "In the case now before us the rule just noticed was not followed. The appeal was allowed on the 11th of November, 1864, and the allowance, with a citation to the adverse party, duly served with a copy of the record, should have been sent here at the next term. This was not done, *and the appeal therefore became void. The citation subsequently issued was consequently without avail, for there was no subsisting appeal.*"

See also U. S. vs. Gomez, ibid at 73.

In Villabolos vs. U. S., 6 How., at p. 90, the court says: "It follows that where a citation is required in a case of

appeal, it must, as in the writ of error, be issued and served on the opposite party before the term of the appellate court next after the appeal is entered." (Yeaton vs. Lenox, 7 Pet., 220.)

In Yeaton vs. Lenox, cited above, the facts are similar to those in the case at bar, and the appeal was dismissed.

United States vs. Curry, 6 How., 106, where the facts were similar to this case, the court, on p. 112, says: "In the case before us the appeal was filed in the clerk's office November 5, 1846. The next succeeding term of this court commenced on the 7th of December in the same year. But there was no citation to the adverse party at that time, and consequently the case was not removed to this court upon that appeal. The citation, which issued on the 27th of August, 1847, would not bring up an appeal returnable to December term, 1846."

In Edmonson vs. Bloomshire, 7 Wall., 306, Mr. Justice Miller says: "The doctrine is placed distinctly on the ground that this court has no jurisdiction of the case unless the transcript be filed during the term next succeeding the allowance of the appeal;" "that the writ of error, like all other common law writs, becomes *functus officio* unless some return be made to it during the term to which it is returnable. These principles have received the unanimous approval of this court, and have been acted upon in a large number of cases not reported, besides several reported cases not here mentioned, and the court has never hesitated to act on this rule whenever it has appeared from the record that the case came within it, although no motion to dismiss was made by either party. In fact, treating it as a matter

involving the jurisdiction of the court, we cannot do otherwise."

Grigsby vs. Purcell, 99 U. S., 505, 506, and cases cited.
Hewitt vs. Filbert, 116 U. S., 142.

S. S. HENKLE,
Counsel for Appellee.

To James Reid Stewart or his Counsel:

Take notice that I will present to the Supreme Court of the United States on the first Monday of January, 1888, present term thereof, at 12 o'clock M., or so soon thereafter as counsel can be heard, the foregoing motion and brief.

S. S. HENKEL,
Counsel for Appellee.

August 15, 1887.

APR 24 1889
JAMES H. MCKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1888.

JAMES REED STEWART,
Appellant,

vs.

BRANCH T. MASTERSON,
Appellee.

No. 287.

BRIEF OF S. S. HENKLE FOR APPELLEES.

BYLAND, LAW PRINTER, 519 7TH STREET, N. W.

IN THE

Supreme Court of the United States.

JAMES REED STEWART,
Appellant.

vs.

BRANCH T. MASTERSON,
J. L. TAIT AND TAIT,
Appellees.

No. 287.

HISTORY OF THE CASE.

The question of the validity of what is termed in the original bill, the McMullin Grant, or grant to the Indians of the Mission of San Jose, was before the Supreme Court of Texas, in the case of McMullin *vs.* Hodge, et als., in 1849, 5th Texas Reports, page 35, and it was there decided:

First. That the plaintiff failed to show title in himself from the indians.

Second. That the so-called grant constituted these indians only tenants at will, and did not pass title.

Third. That the indians were prohibited on the face of the instrument from alienating.

Fourth. That upon extinguishment of the Mission the land became a part of the public domain.

It is alleged in the original bill that McMullin conveyed his title to Bainbridge D. Howard, who in 1851, filed a bill in the U. S. Court against Herndon & Maverick, who had located and obtained patents on part of the land within what was supposed to be part of this Eleven League Tract, that according to the

boundaries claimed, embraced over 20 leagues. Defendants, Herndon & Maverick having failed to conform to rules of practice in equity, complainant obtained a decreee, *pro confesso*, against them that was afterwards made final, directing them to cancel their patents and float their land certificates from that land, which was done, and the certificates floated and located elsewhere. Many other parties who held patents in the disputed territory were not parties to that suit, and their patents are, and have always been, recognized as valid.

Herndon was adjudged a bankrupt after the final decree against him, and Branch T. Masterson was appointed assignee, in bankruptcy of his estate and as assignee, prosecuted an appeal to the Supreme Court of the United States, and while the case was pending there the court having charge of the bankrupt estate, ordered the assignee to sell the right, title and interest of the bankrupt as it stood, which was done; and the purchaser at the bankrupt sale, and the complainants having adjusted matters between themselves, and the estate in bankruptcy being no longer interested, the appeal was dismissed as to the Herndon Estate, leaving Maverick as appellant The court then held that the only question for consideration was whether the allegations of the original and supplemental bills were sufficient to support the decree entered upon default against defendant. The merit or validity of the title was not passed upon, only a question of pleading—whether the allegations supported the decree. The case being affirmed, Maverick floated his land certificates and cancelled his patents, and located his land certificates on other public lands and obtained patents thereon. The suit was not to recover from Maverick the title that the State granted him by his certificates and patent, but to require him to remove his certificate and

patent and get his land elsewhere. The Howard heirs filed suit in the State Court to establish their claim to a part of the land not included in lands held by Herndon & Maverick, on which, without authority of the owner, they had entered a cancellation of the location; the case went to the Supreme Court of Texas, and is reported in 54th Texas, page 186, Howard *vs.* McKenzie.

The Supreme Court there reaffirmed their decision in the case of McMullen *vs.* Hodge, 5th Texas, and held that, only parties to the decree and those claiming under them were bound by the decree, and that the question of validity of the McMullin claim of a grant was not passed on by the Supreme Court of the United States in 18th Wallace 99—the court in that case having expressly limited the decision to a question of pleading. The titles were not before it. The State Supreme Court thus reaffirmed the decision that this was public domain.

Branch T. Masterson was the owner of land certificates entitling him to select any part of public domain to satisfy the certificates, and he located the land in controversy in this suit. The surveyor of the county surveyed the land, returned the field notes to the General Land Office at Austin, Texas. Howard's heirs, by their attorney, Hon. Wm. Alexander, opposed the issuance of patents; the question of the right to patents was argued and briefed, and the opinion of the Attorney-General of the State taken by the Commissioner of the General Land Office. He held that the land was public domain, and that the title had never passed to the Indians of the Mission of San Jose; that it was no longer an open question in this State, and that patents should issue. The patents were thereupon issued by the Commissioner of the General Land Office, and signed by the Governor of the State.

Howard's heirs then filed a bill in Equity in the U. S. Circuit Court in San Antonio, Texas, seeking to have these patents cancelled as being in conflict with their grant. Masterson demurred to the bill, and the cause was dismissed.

Thereafter the bill was filed in this case, and came on for hearing on demurrer. The demurrer was sustained, with leave to amend. (Rec., 24 and 25). The purpose of the amendment being to allow complainants to set up a claim for valuable improvements.

The complainants amended, but asserted their title to the land and refused (though leave was tendered by the Judge without request) to amend and claim improvements. (Rec., 26, *et seq.*)

Is this an appealable decree.

The question that is first presented is, whether this is a final decree from which an appeal can be taken? If James L. Tait and wife Tait were proper parties to be joined in the bill, then no order, or decree disposing of the case as to them having been entered, the case being still pending as to them could an appeal be prosecuted from the order sustaining the demurrer and dismissing the bill as to one defendant? If the appeal could be taken because the claim of complainant against James L. Tait and wife was entirely distinct from that against defendant, Masterson, it would follow that the bill was multifarious and the demurrer was properly sustained on that ground.

The original bill connects complainant's claim of title with that decided upon in McMullen *vs.* Hodge, 5th Texas, and with Ch. No. 10, the record of which also discloses that the complainant's claim is the same that was adjudicated in McMullen *vs.* Hodge. So the bill taken in connection with the cases referred to in

the bill shows affirmatively that complainant has no title. The original and amended bills must be taken together as one instrument.

Daniel Ch. 5th Ed., 402.
Hurd *vs.* Everett, 1 Paige, 124.
Walsh *vs.* Smith, 3 Blank., at 20.
Longworth *vs.* Taylor, 1 McL., 514.

The decisions of State Courts are controlling as to local law.

The Supreme Court of the United States in the case of Christy *vs.* Pridgeon, 4 Wall., 203, says:

"The decision of the highest court of a State must according to established principles of this Court, be accepted as the true interpretation so far as it applies to titles to land in that State, whatever may be our opinion of its original soundness."

In that case, the Supreme Court of Texas had construed a law exactly contrary to the construction of the same law by the Supreme Court of California, and both cases were before the Supreme Court of the United States. They decided the California case according to the California decision, and the Texas case according to the decision in Texas, adopting the language used in League *vs.* Egery, 24 How., 266, that the Supreme Court of the United States recognize the decision of the Supreme Court of a State as having a binding force almost equivalent to positive law.

In Green *vs.* Neal, 6th Peters, 291, the rule is thus stated, the Federal Court when sitting within a State is a Court of that State, being so constituted by the Constitution and Laws of the Union.

In Slaughter *vs.* Glenn, 98 U. S., 242, the court says the controversy between the parties is to be decided

according to the jurisprudence of Texas. We must administer the law of the case in all respects as if we were a court sitting there and reviewing the decree of an inferior court in that locality. (See also Peeler Treatise of Law and Equity as distinguished and enforced in courts of the United States, page 200.)

The Texas Courts have declared Complainant's title void.

Applying the well settled rule above stated, the Supreme Court of Texas not only has passed upon the question, but has declared this identical claim of grant to be void in cases where the complainant's vendor was a party. The complainant in this case, holding under, and in privity with Howard's heirs and McMullin, who were before the court as parties in McMullin *vs.* Hodge, 5th Texas, and Howard *vs.* McKenzie, 54th Texas, and the bill in this case referring to the decision in 5th Texas, and Ch. No. 10 as the foundation of their right; they in effect set up a void claim of title as the basis of their claim, and the Circuit Court rightly sustained the demurrer, if there had been no other ground than this for its ruling. It is sought to avoid the force of this by claiming that the land in controversy was not subject to location because of the proviso to Sec. 2, Art. XIV. of the Constitution of Texas, which proviso is as follows:

"Provided that all genuine land certificates heretofore or hereafter issued, shall be located, surveyed and patented only upon vacant unappropriated public domain, and not upon any land *titled* or *equitably* owned under color of title from the sovereignty of the State, etc."

The Complainant must recover upon the strength of his title.

It is a well settled rule under numerous decisions in this State, that a plaintiff must recover, if at all, upon the strength of his own title, and not upon the weakness of the defendant's title.

The State of Texas is not contesting the validity of the patents, nor seeking their cancellation, and complainant cannot contest it, unless he can show title in himself. If he has no title he cannot be heard to dispute the patents, as he is not injured by the Act of the State in granting them; but suppose he could raise this question: Long prior to the adoption of this Constitution, the Supreme Court in McMullin *vs.* Hodge, 5th Texas, had decided that this instrument relied on as title was not a title, but a tenancy at will that had expired, and that this land was public domain subject to location. In Howard *vs.* McKenzie, 54th Texas, that decision was reaffirmed after this Constitution was adopted. The status of this land was fixed as public domain, and not land *titled or equitably owned under color of title from the sovereignty of the State.* If there had been no decisions on the subject, the result would be the same. The terms "*titled*" or *equitable owned* under *color of title* from the *sovereignty* of the *State* would be construed with reference to the statutes and decision of the State.

Art. 3192 Revised Statutes defines "*title*" to mean a *regular* chain of transfer *from or under the Sovereignty* of the *soil*, and color of title means a consecutive chain of such transfer down to such person in possession without being regular, as if one or more of the muniments be not registered, or not duly registered. The Supreme Court prior to the adoption of the Constitution had decided that a void grant is not title or color of title. Smith *vs.* Power, 23d Tex., 29; Marsh *vs.* Weir, 21st Tex., 97, title that is good against the Government is necessary. After the adoption of the

Constitution the Supreme Court construes this section as follows, viz: In Atkinson *vs.* Ward, 61 Texas, 388, the court says:

"The Constitution meant to protect against location and survey *titles* which are *colorably valid grants* or *titles* from the *State*, but not to shield those who claim title under such facts as the State denounces as sufficient to vacate a previous appropriation of vacant public domain, and to annul whatever right may have been antecedently acquired."

That case also decides that a patent carries with it a *prima facie* right to the land, and in order to rebut that, a contestant must show a clear prior or superior right.

In Hanvick *vs.* Dodd, 62 Texas, this clause of the Constitution is again construed, and it is there held that the rule can only be invoked in favor of those who have either a legal or equitable title or claim. Parties claiming under a forged title from the Government were not within the meaning of the Constitution, though the supposed grant had been plotted on the maps of the county and General Land Office, and they hold that the latter part of the section as to the effect of possession is not title, but only notice of title, if it exists.

The Complainants title is void.

The complainant's claim is thus declared void in every way that is possible, and the chain of title being set out in the bill, and the fact being also set up that defendant holds under a patent, he affirmatively shows title in defendant, and therefore the bill was subject to demurrer, and the demurrer properly sustained.

The bill is multifarious.

If the complainant had presented in his pleadings an apparently good title, still the demurrer would necessarily be sustained—

1st. Because the bill was multifarious.

2d. There was a misjoinder of parties.

3d. Complainant had a full, adequate, and complete remedy at law, and alleged no facts that could give the court sitting equity jurisdiction of the subject matter.

The bill was multifarious in that it sought to establish rights and an equitable lien on land bought by Tait and wife, and to have an accounting and settling between Tait and complainant of partnership matters in which Masterson was in no manner interested, and concerning which he neither sought or claimed any relief as to Masterson, and in the same suit to remove the cloud from his title to other land, and have Masterson's patents cancelled, while there is no claim or allegation that Tait or wife are in any manner interested in the patents; but the bill, on the contrary, shows that he had no interest. See Walker *vs.* Powers, 104 U. S., 250 and 251. Bouvier "title multifarious and misjoinder."

The Complainant had a remedy at law.

If the complainant had any claim at all according to his allegations, he had a plain, adequate, and complete remedy at law. Every muniment of title from the Indians to him is alleged to be a conveyance in fee and a legal title. The defendant, Masterson, is alleged to have trespassed upon him and to be in possession holding adversely. The action of trespass under the State Statutes, Arts. 4784, *et seq.*, provide the legal remedy for that State of facts, and an action of ejectment and for *mesne* profits would lie:

"A party asserting a legal title to property not in his possession, asking for account for rents and profits, cannot proceed by bill. He has an adequate remedy by ejectment and trespass for *mesne* profits."

Hillian *vs.* Ebbinghaus, 110 U. S., 572.
Ellis *vs.* Davis, 109 U. S., 493.
106 U. S., 678.
6 Wall., 136.
N. Y. Co. *vs.* Memphis Note Co., 107 U. S., 214.

Cannot be sustained as a Bill of Discovery.

It cannot be sustained as a bill of discovery, for it waives expressly answer under oath, except as to certain interrogatories specified, and they only relate to notice of the existence of the claim of title, while the allegations show that the records of the case gave notice to Masterson. Want of notice of a good title was not claimed, but notice of the claim of title, as it was with its invalidity, was not disputed. The question of notice was not the issue. The issue was the validity of the grant claimed. A bill for discovery must contain the averment that the complainant is unable to prove the fact sought from the conscience of the defendant by other testimony. Brown *vs.* Swan, 10 Peters, 500.

The express waiver of sworn answer disposes of that.

Not a bill to remove a cloud.

This could not be a bill to remove a cloud from a title for those only who have a clear legal and equitable title to land connected with possession have any right to ask a court of equity to give them peace, or dissipate a cloud on their title.

Ortow *vs.* Smith, 18 How., 265.
United States *vs.* Wilson, 118 U. S., at 89.
Fussell *vs.* Gregg, 113 U. S., at 555.
Hipp *vs.* Habin, 19 How., at 277.

In this case complainant alleges that Masterson is in possession, holding under a patent issued by the State to him.

Cannot be sustained on the ground of fraud.

The allegations of fraud are not sufficient to show any ground for a suit in equity, for the bill alleges that the certificates located by Masterson were issued by the State, the surveys made by the public surveyor, the patents issued by the commissioner of the General Land Office, and signed by the Governor of the State. No fraud is alleged on the part of any of these officers, nor that patents were obtained in any manner misleading the State officers. As far as fraud is alleged, it is distinctly confined to dealing with Tait as to possession. Tait could neither grant or withhold a survey or patent, nor is it alleged that he could. As the title to the land depends on the validity of the patent, and that clearly conferred title, unless the land was appropriated by a valid grant, or title, it follows that if the patents were valid the patentee was lawfully entitled to possession, and it could not be fraudulent to obtain possession. In discussing what is necessary in order to give a Court of Equity jurisdiction, the Supreme Court of the U. S. in Ambler *vs.* Choteau, 107, U. S., 590 and 591, says:

"The allegations of fraud in their general terms are as broad as language can make them, specifically they are confined by other allegations in the bill. * * * The words fraud and conspiracy alone, no matter how often repeated in pleading, cannot make a case for the interference of a Court of Equity. Until connected with some specific acts for which one person is in law responsible to another they have no more effect than other words of unpleasant signification; while in this case the words are used often, the facts to which they are applied are not such as to make the defendant answerable to the complainant."

Apply the principle as announced in that case to this.

The allegations show affirmatively that defendant is holding under a patent issued to him by the State. That *prima facie* gave him title to the land, and if he had title it could not be a fraud to go into possession for title gave him a right to possession. If the complainant, in fact, held a valid title under a prior valid grant, then, as before shown, he had a complete remedy at law, and if he had no title it was not a fraud for the owner of the patent to go into possession.

S. S. HENKLE,
Counsel for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 287.

JAMES REID STEWART, APPELLANT,

vs.

BRANCH T. MASTERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED JUNE 11, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 287.

JAMES REID STEWART, APPELLANT,

vs.

BRANCH T. MASTERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Note of filing bill and præcipe for subpœna	2	1
Original Bill	3	1
Exhibit A—Memorandum of agreement between James Reid Stewart and James L. Tait, May 9, 1878	34	15
B—Account	36	16
Appearance of defendants Tait and wife	43	20
Demurrer of Tait et ux. to bill filed	43	20
Appearance of defendant Masterson	43	20
Demurrer of J. L. Tait and wife	44	21
Demurrer of Masterson set for hearing	47	23
Demurrer of Branch T. Masterson	48	22
Order sustaining demurrers, &c.	51	24
Opinion on demurrers	52	24
Request to file amended bill	55	26
Amended bill	56	26
Exhibit A—Memorandum of agreement between James Reid Stewart and James L. Tait, May 9, 1878	75	34
Order *pro confesso* against Tait	77	35
Note of filing Masterson's demurrer to original bill	78	36
Demurrer of Masterson set for hearing	78	36
Demurrer of Branch T. Masterson to amended bill	79	37
Final decree	83	39
Allowance of appeal	84	39
Clerk's certificate	85	39
Appeal bond	86	40
Citation	89	41
Proof of service of citation	90	41

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 24, 1888.

1 *Caption.*

Be it remembered that at the regular October term, A. D. 1884, the following proceedings were had in the circuit court of the United States for the western district of Texas, sitting at San Antonio, Texas, in said district, in the case of James Reid Stewart, complainant, against Branch T. Masterson *et al.*, No. 20 on the chancery docket of said court, viz:

2 *Filing of Original Bill by Complainant.*

From the minutes of the rule book of the chancery court of the United States for the western district of Texas, at San Antonio, page 24.

* * * * * * *

JAMES REID STEWART
vs.
BRANCH T. MASTERSON. } No. 20.

SEPT. 8TH, 1883.

On this day came the complainant, by his solicitors, James Duryee Stevenson, Esqr., Joseph S. Carr, Esqr., and Thomas J. Devine, Esqr., and filed his original bill of complaint and prayed for subpœnas for defendants herein, which were issued accordingly.

Attest: W. C. ROBARDS, *Clerk.*

3 *Original Bill. Filed Sept. 8th, 1883.*

United States Circuit Court for the Western District of Texas, at San Antonia.

JAMES REID STEWART, Complainant,
against
JAMES L. TAIT, —— TAIT, his Wife, and BRANCH T. MASTERSON, Defendants. } No. 20.

Bill in equity.

To the judges of the circuit court of the United States for the western district of Texas:

James Reid Stewart, of Glasgow, Scotland, and a subject of the United Kingdom of Great Britain and Ireland, brings this bill against James L. Tait and —— Tait, his wife, of Bexar county,

Texas, and citizens of the State of Texas, and Branch T. Masterson, of the city of Galveston, county of Galveston, and a citizen of the State of Texas, and thereupon your orator complains and says that he is an alien to the United States of America, and that the defendants are all citizens of the State of Texas as aforesaid, and also of the said United States.

And your orator further shows the court that he and the defendant, James L. Tait, at the city of Glasgow, Scotland, on the
4 10th day of May, 1878, entered into an agreement in writing, a copy of which is hereto attached and marked Complainant's Exhibit "A," whereby it was agreed that the defendant, James L. Tait, should purchase for your orator 2,560 acres of land in the State of Texas, to be selected by the defendant, James L. Tait, on best terms and at a price not to exceed $2.88 per acre, the title thereto to be taken in the name of your orator and the same to be paid for by him.

Your orator also agreed thereby to furnish money to fence the said land and build a dwelling-house and make other suitable improvements thereon and stock the same as a farm, and also to furnish said Tait one hundred and fifty pounds sterling, equal to $726, for the travelling expenses and living of himself and your orator's son, John Reid Stewart, until they should become located upon said land, within three months from the date of said agreement, which said land so selected, together with the improvements thereon and stocked as aforesaid, should be worked and managed by the defendant, James L. Tait, for the period of five years from the date of the purchase of said land, to wit, the 22d day of June, 1878, the profits of the same to be equally divided between said James L. Tait and your orator's said son, John Reid Stewart.

5 It was also agreed that the defendant, James L. Tait, should purchase 2,560 acres of land in said State on four years' credit in his name and that of your orator's said son, to be owned jointly by them, the same to be paid for out of the realized profits from your orator's farm and the business of farming, the same as aforesaid, for a period of not exceeding five years, and that the money advanced by your orator under this agreement for the said stock, dwelling-house, fencing, and other improvements should bear interest at the rate of six per cent. per annum for the period of five years from the date of the advancement of the same, and that the portion thereof advanced for said stock should be repaid at the expiration of five years from the date of the purchase of said land by the said James L. Tait, he to also do his best as to supervision and guidance of your orator's said son, and to carry on the business of and manage your orator's said farm and to be responsible to him therefor; the amount to be advanced by your orator not to exceed the sum of three thousand two hundred and fifty pounds sterling, equal to $15,730.00.

And your orator further shows to the court that in pursuance to said agreement and at the request of the said defendant, James L. Tait, and upon his representations in relation to the carrying
6 out of said agreement that the same would be a profitable safe investment, your orator advanced and paid over to the defendant, James L. Tait, the following amounts of money at the times stated opposite each item thereof, as follows, to wit:

Amount sterling.			Time.	
£	s.	d.	Month.	Year.
20	--	--	May 10th,	1878
200	--	--	June 4th,	1878
2,202	15	1	June 27th,	1878
1,600	17	1	July 23d,	1878
252	5	--	October 17,	1878
215	3	8	Feb'y 8th,	1879
50	--	--	March 17th,	1879
15	15	--	July 16th,	1879

Amounting in the whole to $22,054.84; and that the defendant, James L. Tait, in pursuance of said agreement, purchased for your orator and in his name a league and one labor of land, consisting of 4,605 acres of land, situated, lying, and being in the county of Bexar and State of Texas as aforesaid, and known as the Gasper Flores survey No. 13, within the territory of the McMullen grant, hereinafter mentioned, which said 4,605 acres of land is described as follows, to wit: Beginning at a stake set for the S. W. corner of survey No. 12, on the east side of the Medina river, thence N. 4,360 varas to the south line of survey number 65; thence west 160 varas; thence north 5,308 varas to the northeast corner of this sur-
7 vey No. 13; thence west 2,390 varas; thence south 10,918 varas to the northeast bank of the Medina river for the southwest corner; thence down said river to the place of beginning; and that said James L. Tait, also in pursuance of said agreement, erected a dwelling-house, also outhouses, fences, and other improvements, upon said land, and purchased and placed upon said land a large stock of sheep; also some cattle, horses, mules, hogs, ambulances, wagons, and agricultural implements, to a large amount, as hereinafter stated, and he, with his family, went into possession and occupancy of the same under said agreement.

And your orator further shows the court that the said defendant, James L. Tait, wholly disregarding said contract and his obligation thereunder, wickedly, designedly, knowingly, and falsely, with intent to cheat, wrong, and defraud your orator out of a large portion of said money by him advanced as aforesaid under said contract, made and returned to your orator a false and fraudulent statement of the expenditure of said money under said contract, a copy of which is hereto attached and marked Complainant's Exhibit "B," whereby, amongst other things, he falsely represented that he, the said James

L. Tait, had paid out for said land and as for the purchase price and expenses of the conveyance of the same	$10,882 00
For building house, garden fence, & outhouses	2,484 25
Furniture of said house	903 52
8 Fences, stabling, gates, and lumber & posts for fence	3,663 26
Stock, including horses, wagons, mules, sheep, &c.	3,538 28
General expenses at ranch	618 08
Wages account	515 00
Provisions, &c.	753 19
Amounting in the whole to the sum of	$23,357 58

While in truth and in fact the amount lawfully and actually paid out and expended under said contract *were* as follows, to wit:

For purchase of said land and conveyance	$9,000 00
Building houses, outhouses, garden fences	2,484 25
Fencing, stabling, & gates & posts & lumber	3,663 26
Stock for farm	3,538 28
Expenses of himself and your orator's son from Glasgow to farm	726 00
Amounting in the whole to the sum of	$19,411 79

That the item in the said statement of $10,882.00 represented to have been paid for said land is false as aforesaid to the amount of $1,882.00, and the four items in said statement for furniture, $903.52, and $618.08 for general expenses of ranch, $515.00 for wages, and $753.19 for provisions, were not chargeable to the plaintiff under said contract, nor was the defendant, James L. Tait, to purchase the said provisions and furniture or incurr the said expenses with your orator's said money so advanced as aforesaid, and although the period of the continuance of said contract expired on the 22d day of June, 1883, and your orator has frequently demanded a settlement
9 and an accounting with the defendant, James L. Tait, under said contract, still he has neglected and refused to render any account of said moneys so received except the false account here-before mentioned, and has unlawfully and fraudulently converted to his own use the sum of $2,643.05, a part of your orator's said money advanced to the said James L. Tait as aforesaid, and the same, together with the interest thereon at the rate of eight per cent. per annum from the date of the advancement and delivery of the same to the defendant, James L. Tait, to wit, October 17th, 1878, is due and owing from him to your orator.

And your orator further shows the court that while the defendant, James L. Tait, was in the possession and occupancy of said land under said contract as aforesaid, to wit, on or about the 2d day of October, 1881, he, unlawfully, fraudulently, with intent to cheat and defraud your orator, cut and caused to be cut and removed and sold from said land a large amount of timber, trees and wood, to wit,

2,700 cords thereof, the property of your orator, and of the value of $2,700, and converted the proceeds thereof to his own use, and the said sum of $2,700 is due and owing to your orator from the defendant, together with interest thereon from the said 2d day of October, 1881, no part of which has been accounted for by said defendant.

10 And your orator further shows to this court that of the said sum of $22,054 advanced by him as aforesaid the sum of $3,538.28, invested by the defendant, James L. Tait, in stock, became due and payable to your orator at the expiration of the five years after the date of the purchase of his said land, to wit, on the 22d day of June, 1883, together with interest on the whole amount advanced for said improvements, to wit, the sum of $9,685.79, at the rate of six per cent. per annum from the 22d day of June, 1878, no part of which has been paid; but the same, with interest as aforesaid, is justly due and owing to your orator from the defendant, James L. Tait.

And your orator further shows to the court that the whole amount of money derived by the defendant, James L. Tait, from the sale and disposal of the said timber and wood from your orator's said land during said time of five years, together with the said sum of $2,643.45 advanced to and by him unlawfully converted to his own use as aforesaid, amounts to the sum of $5,343.05, besides the interest thereon as aforesaid, and that the defendant, James L. Tait, has invested the same in the purchase of the following-described land and in making permanent improvements thereon, to wit, 1,058 acres of land, situated, lying, and being in the county of Bexar and State of Texas, out of the W. T. Neil survey No. 62, and which is de-

11 scribed as follows, to wit: Beginning at the northwest corner of the said Neil survey, thence south along the W. line of said survey 5,579 varas to the Castroville wagon road; thence N. 67° E. along this Castroville road 1,214 varas to the west line of the A. C. McKean tract; thence north along the W. line of the McKean tract 5,110 varas to the north line of the Neil survey; thenc- W. 1,118 varas to the place of beginning; that last said land was purchased of and from J. E. Foster and by him conveyed to the defendant, James L. Tait, on the 31st day of August, 1881, and that the deed thereof was duly acknowledged on the 31st day of August, 1881, and recorded in vol. 19 of Deeds in the records of Bexar county, on page 568; that the last-described land and real estate to the amount of 200 acres of land, with the improvements thereon, are occupied by the defendant, James L. Tait, and —— Tait, his wife, as and for a homestead for themselves and their family, and that the whole of the purchase-money which has been paid therefor and all that has been expended in making the improvements thereon, to the amount of said sum of $5,343.05, was your orator's money, furnished as aforesaid by him and by said James L. Tait converted to his own use, together with that derived by the sale of said timber and wood by him as aforesaid, and that the defendant, —— Tait, wife of the defendant, James L. Tait, had full knowledge of the fact that the

12 purchase of said land and that the payments for the same and

the improvements on said land were unlawfully made with your orator's said money as aforesaid, and that she unlawfully colluded with the defendant, James L. Tait, her husband, thereby to defraud your orator as aforesaid, and consented thereto with full knowledge of the facts hereinbefore stated.

And your orator further shows the court that on the 22d day of June, 1878, he became and ever since has been and now is the sole and absolute owner and, except as hereinafter set forth, in the lawful and peacible possession of the said described land purchased for him as aforesaid by said defendant, James L. Tait, under said agreement and known as survey No. 13 aforesaid; that said land was purchased of and from Lorenzo Castro, of San Antonio, Texas, and by him conveyed to your orator by a good and sufficient deed of conveyance, with covenants of warranty, bearing date the said 22d day of June, 1878, which said deed was executed and acknowledged and duly recorded on that day in vol. 9, on page 150, of the records of Bexar county for deeds, and that the said Lorenzo Castro acquired the legal title to and possession of said last-mentioned land, survey No. 13, by good and sufficient deeds of conveyance from the heirs of Bainbridge T. Howard, deceased, in whom the legal title
13 thereto was vested, decreed, and adjudged by the decree of this the circuit court of the western district of the State of Texas, rendered at its June term of court for the year 1866, held at the city of Austin, Texas, in a certain suit in said court, wherein the said heirs of *of* Bainbridge D. Howard were complainants by revivor and substitution therein for and in place of said Bainbridge D. Howard, the original complainant, who had died in the month of December, 1851, pending suit, and wherein Archibald Hodges, Miles M. Battle, and others and Samuel A. Maverick and others were defendants, which said suit was styled chancery suit No. 10 on the equity docket of said court; that said decree in said suit was duly certified and recorded in Book U No. 2, on page 227, of the records of Bexar county for deeds, on the 5th day of August, 1867, and that said heirs of Bainbridge D. Howard acquired the legal title to and possession of said land, survey No. 13, by inheritance and by said decree and the mandate of the Supreme Court of the United States of America in said suit on appeal therein affirming said decree and decreeing the title to the tract of land described in said decree to be a good title and to be in the heirs of Bainbridge D. Howard as aforesaid, which said tract of land described in said decree is described as follows, to wit: A tract of land granted by the government of Spain according to the form of law of Spain
14 on the 22d day of November, 1766, to the Indians of the mission of San José, and by them conveyed to John McMullen, beginning on the top of Padron Hill, thence running from the north to the south to the creek called the Alamos, at the crossing thereof, where there was placed a landmark near the road leading to the presidio of the Rio Grande; thence along the road westerly to the arroyo or creek Tahahina, where there was a landmark; thence turning towards the north to the road that comes from the cañon to the Luna Alta, where was placed a landmark by piling stones a

short distance from the landmark of Baltazar Perez, an adjoining proprietor; thence following an east course to the said Pedron Hill to the place of beginning, said tract lying in the counties of Bexar and Medina, in the State of Texas, and being now commonly known as the pasture lands of the mission of San José, and which is hereinafter styled "McMullen's grant," and that your orator's said land hereinbefore described as Gasper Flores survey number 13 is a part of and situated wholly within the boundaries of said McMullen's grant and within the county of Bexar as aforesaid, and the said Bainbridge D. Howard acquired the equitable title to and the lawful and actual possession of said McMullen grant by conveyance to him from said John McMullen, who departed this life
15 on the 5th day of December, 1851, leaving surviving heirs, who were parties defendant in said suit No. 10; that while the said John McMullen was in the lawfull possession of the said McMullen grant, claiming the same as the owner thereof by a good and sufficient title acquired from the sovereignty of the *sail*, to wit, on or about the 23d day of February, 1840, the said Samuel A. Maverick, being then the lawful owner of a certain Texas land certificate, No. 276, as assignee of Gasper Flores, the grantee, of the State of Texas, located said certificate on and caused to be surveyed and located thereunder a portion of land within said McMullen grant, known as the Gasper Flores survey No. 13, which is the identical land now owned by your orator as aforesaid and hereinbefore described, which survey and the field-notes thereof are recorded in Book A No. 1 of the records of the surveyor's office of Bexar county, on page 249, and afterwards procured a patent for said land under said certificate and survey, and thereby became vested with all the title to the same that the State of Texas then had or may have had thereto, and then and there claimed said described survey, together with other surveys and locations of lands upon said McMullen's grant, advers-ly to the good title and possession of the said John McMullen, and at the same time other of the
16 defendants in said suit No. 10 claimed portions of said McMullen grant the same as the said Maverick, and their several claims, locations, surveys, and patents became and were a cloud upon the said title of said John McMullen to said McMullen grant, and so remained when the said Bainbridge D. Howard became possessed of the same as aforesaid; and thereupon, on the 17th day of February, 1851, he filed his bill *in* and commenced said suit No. 10 to avoid a multiplicity of suits, set aside and annul said locations, surveys, and patents, and to remove the said cloud thereby created upon and impending over his title to said McMullen grant, and to quiet his possession therein, and thereupon and afterwards subpœna was issued in said suit for said Samuel A. Maverick, which was returned as executed and served upon him on the 18th day of November, 1851, and he became a party to and appeared in said suit, and upon final hearing of said suit No. 10 on the pleadings, orders, and proofs submitted therein it was ordered, adjudged, and decreed that the said heirs of Bainbridge D. Howard, who were in said decree mentioned by name, should have and recover of said Samuel

Date of the survey.	No. of the survey.	No. of acres.	Grantee of certificate.	No. of certificate.	Date of certificate.	County surveyor's record.
Jan'y 24, 1882	No. 13	1,280	E. V. Dale	222	July 12, 1881	Dec., 15, p. 588
" "	" 13¼	1,280	Isaac Garner	535	Aug. 4, 1881	" " 589
" "	" 13½	640	Clementee Balusteck	190	July 16, 1880	" " 590
Sept. 2, "	" 13¾	1,280	S. C. Craig	1861	Ap'l 18, 1882	" 16, " 606
July 26, "	" 5	1,280	Precella Talkington	641	Aug. 25, 1881	" 15, " 591

And caused the same to be returned to the general land office of the State of Texas, and procured patents to issue thereon to himself to the land described in said surveys and field-notes thereof last above mentioned, which includes and covers your orator's said land as aforesaid and other lands adjoining the same; and that afterwards, to wit, on or about the 1st day of August, 1882, the said defendant, Branch T. Masterson, in pursuance of said collusion with said defendant, James L. Tait, and with intent and for the purpose aforesaid and with full knowledge that said James L. Tait was holding your orator's said
22 lands and was in the occupancy and actual possession of the same and the improvements thereon as his agent and tenant under said contract, unlawfully and collusively and fraudulently commenced and instituted a certain action of ejectment or suit of trespass to try title in the district court of the State of Texas for the county of Bexar aforesaid, and caused process to issue therein against said James L. Tait, as the defendant therein, to recover the possession — the lands described in his said patents and that of your orator included therein as aforesaid, which said suit is styled and numbered on the civil docket of said district court of Bexar county as follows, to wit, Branch T. Masterson, plaintiff, *vs.* James L. Tait, defendant, No. 1070, and that said suit No. 1070 in district court of Bexar county was commenced in pursuance of said collusive agreement between said defendant for the purpose, amongst other things, of furnishing a pretext for said James L. Tait to surrender the possession of your orator's said land and all the improvements thereon to said Masterson, and that in pursuance of said collusive agreement, and in consideration of the payment to him by said Masterson of a certain sum of money, the amount of which is unknown to your orator, and in consideration that said Masterson should afterwards discontinue said suit No. 1070 in the district court of Bexar county according to terms of said collusive agreement to commence
23 the same, the said James L. Tait unlawfully and fraudulently surrendered and delivered the possession of the said house and all the improvements in your orator's said land as aforesaid, and also the possession of that tract of survey of land to which Masterson holds a patent in which said house is situated.

And on or about the 1st day of August, 1882, said defendant and his wife removed therefrom, and the defendant Masterson unlaw-

fully and fraudulently entered upon that portion of the plaintiff's land upon which the said house is situated, to wit, that portion thereof included in what is hereinbefore described as survey No. 13¼, made on the 24th day of January, 1882, on certificate No. 535 for said Masterson, consisting of 1,280 acres of land, unlawfully and collusively went into actual occupancy of the said house and all the improvements erected thereon, and unlawfully converted the same to his own use, and unjustly and unlawfully claims to be the owner thereof under his said survey and patent thereof to him, and holds the said — adversely to the plaintiff in violation of the plaintiff's right and in contempt of said decree, to the plaintiff's great and irreparable injury and damage in the sum of $5,000 *dollars;* and your orator further shows the court that said defendant Masterson claims and pretends to be the owner of all your orator's said land under and by virtue of said locations and surveys made as aforesaid by him,
24 and by *and by* virtue of his patents thereto and to be entitled to the possession of the remainder of your orator's said land besides that which he now holds adversely as aforesaid, and is thus disturbing your orator's peaceable possession of said remainder of his said land, though he well knows that said locations and surveys made by him and the patents issued to him thereon are absolutely void, which the same your orator charges to be a fact, but that the same uncancelled form a cloud upon your orator's title to his said land and depreciates the value, to your orator's great and irreparable injury, which said cloud cannot be removed therefrom and your orator's title thereto be quieted in him at law without a multiplicity of suits and actions, or at all without the remedial decree of this court of equity.

And your orator further shows to this court that the said James L. Tait is insolvent and unable to respond in damages to the claims of your orator, as hereinbefore stated and set forth, and has neither money or property in his own name or otherwise except the said property and homestead of the defendants, James L. Tait and his wife, purchased with your orator's money as aforesaid, and
25 the same cannot be reached by attachment or execution in an action at law or otherwise, or in any means whatever, save by the said remedial decree of this court of equity.

And your orator further shows to this court that the improvements made on your orator's said 4,605 acres of land, including the dwelling-house, outhouses, cisterns, stables, gates, and fences, cost your orator the full sum of $6,147.50, as hereinbefore stated and as represented by defendant, James L. Tait, in his said statement, marked Exhibit "B," and that your orator caused the same to be placed on said land in good faith upon the belief that he was the sole and absolute owner of the same, and that the said improvements became and formed a part of said land and are inseperable therefrom as fixtures thereon; that by the erection of said improvements and by the sinking of a well and breaking up a portion of the said land and cultivating the same and by the increase in the value of said improvements and the land in consequence they are now reasonably worth and have increased the value of said land to

the amount of ten thousand dollars; and in case your orator should fail to establish a good and perfect title to said land in this suit, and the title thereto should become vested in the defendant under his said locations, surveys, and patents by the decree of this court
26 in this suit in final hearing, the entire value of said improvements would thereby become lost to him forever, unless by the remedial decree of this court the value thereof be made a lien upon the said land for the payment of the same to your orator from the defendant, Branch T .Masterson.

And your orator further shows the court that the defendant, —— Tait, the wife of James L. Tait, has or claims to have some interest in or title to lands hereinbefore described as their homestead and purchased with your orator's money as aforesaid, which interest or title, if any, is subject to the rights of your orator herein stated.

And your orator further shows this court that the defendant, James L. Tait, and Branch T. Masterson each has in his possession and under his control certain receipts, memoranda, and other writings and papers concearning and in relation to the matters hereinbefore set forth, from which the truth of said matters or some of them would be made to appear, and your orator seeks from each defendant an accurate description of the same and of all the particulars, circumstances, and agreements pertaining to the said matters and facts hereinbefore stated in this bill, so far as the same are within their knowledge, information, or belief.

But your orator hereby waives answer under oath as to all matters hereinbefore stated, except as to such matters as are specified
27 in certain interrogatories herein propoundid. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as, by the note hereunder written, they are, respectively, required to answer—that is to say:

1st. Whether Complainant's Exhibit "A" attached to this bill be a copy of the original agreement between your orator and the defendant, James L. Tait, and whether the same is not correctly set out by averments in said bill; and, if not, in what particular is it correctly and in what particular incorrectly stated.

2d. Whether the plaintiff did not advance and pay out under said agreement $22,054 84 cents, as aver-ed in this bill.

3d. Whether the erection upon your orator's said land of the said dwelling-house, outhouses, garden fence, and other necessary improvements thereon cost and were they reasonably worth at the time of erection the said sum of $2,484.25, and whether the erection
28 of said fence cost and *and* was reasonably worth the said sum of $3,663.26, and whether the said 4,605 acres of land has not been increased in value by virtue of the improvements put thereon at your orator's expense, as aforesaid, *is* to the amount of ten thousand dollars.

4th. Whether the defendant, James L. Tait, is not now insolvent, or whether he or his wife has any property that is not exempt from execution, and, if not insolvent, what money or property has he or his wife, if any, liable to execution, and from whom was the money derived which was used in the purchase of the tract of land described in this bill as that on which the homestead of said James L. Tait and family is situated. State what said tract of land cost, and how much *and how much* has been paid thereon, and what the dwelling-house, outhouses, fences, stables, and all the improvements cost, and when and from whom the money was derived to pay for the same.

5th. Whether there was any understanding between said James L. Tait and the defendant Masterson in reference to his making his said locations and surveys upon your orator's said 4,605 acres of land, and in reference to his taking possession of the same or any part thereof or having the same done by any one for him, and what conversation or correspondence was had between them in relation
29 to said 4,605 acres of land or any part thereof or any improvements thereon or of the possession of the same, and when any and all such conversation or correspondence occurred, and what memorandum or receipt or agreement was made by either in relation thereto, and state in whose possession the same are now in, and give a copy or, if lost, a description of the same.

6th. Whether defendant Masterson paid to James L. Tait any money or anything of value for or paid any of his expenses incurred in the surrender of the possession of any portion of said 4,605 acres of land and the improvements thereon, and whether said suit No. 1074 in district court of Bexar county was not commenced with a distinct understanding that same should be dismissed at said Masterson's costs, he also to pay all expenses incurred by said James L. Tait in said suit and in removing from said land and delivering the possession of the house to him, said Masterson, and whether there was any agreement that said Masterson should pay any part of the expense and cost of improving the property hereinbefore described as defendant's, Tait's, homestead in consideration of such delivery to him of any part of the said 4,605 acres of land or the improvements thereon; if so, state fully what the same was.

30 7th. Whether said Masterson knew or *or* had any knowledge of the boundaries of the said McMullen grant and what knowledge he had of the same and of the same being map'd out and displayed upon the county maps of the county of Bexar and Medina, which were issued by the general land office of the State of Texas, and whether the boundaries thereof were not displayed upon the maps of the general land office which pertain to the territory included within said counties, and whether he knew or had any knowledge of the said decree and all proceedings in said suit No. 10 prior and subsequent to the rendition of said decree, and that your orator's grantors or those whom he acquired or claimed to acquire title to the said 4,605 acres of land were put into the actual possession of the said McMullen grant by process under said decree, and that the said 4,605 acres of land were included in said grant, and whether he

knew that your orator and those from and through whom he claimed to have acquired title were required to pay the State and county taxes on the said 4,605 acres of land, and whether said Masterson knew or had knowledge or information that your orator had erected valuable buildings, fences, and made improvements thereon, and that your orator's appropriation thereof was evidenced by the occupation of the same by your orator or by the said James L. Tait holding for him, and when and how such knowledge and information was acquired, and what said Masterson knew and what knowledge and information he had in relation to the matter mentioned in this interrogatory.

31

And to the end that an accounting be had between your orator and defendant, James L. Tait, as to the amount due your orator for money advanced and agreed to be repaid your orator under the said contract between them and the interest thereon, and that the defendant, James L. Tait, be decreed to pay the amount so found due your orator, and that an accounting be had as to the amount due your orator for money converted to the defendant's, James L. Tait, own use, as hereinbefore charged, and that the amount thereof so found due may be decreed a lien upon said property, both real and personal, purchased therewith to the amount of the defendant's, James L. Tait, interest in the same and the interest of his said wife, and that their said interest therein may be sold to pay the amount so found due, and that the defendants, James L. Tait and his wife, be forever barred and foreclosed of all interest in and to the same, save the right to redeem the same by the payment of the amount of such lien before such sale, and that your orator have a decree for the payment of any balance that may be found due him upon such lien over and above the proceeds of such sale, and that your orator may have execution for the same, together with the amount found due for interest and money to be repaid, and that your orator may be decreed to be the owner of said 4,605 acres of land and said title thereto be vested in him, and that the said cloud upon the said title, created by the said locations, surveys, and patents of said Masterson be removed and said defendant Masterson forever barred of all right, title, and interest in and to the same or any part thereof, and that an accounting be had as to the value of the rents and profits of the portion held by said Masterson and the damage and waste by him done and committed on said land or any part thereof, and that he be decreed to pay the same, and that execution issue therefor, and praying, in the alternative, that in case said 4,605 acres of land be decreed to be the property of, and the title thereto be vested in, the defendant Masterson, then and in that case your orator prays that the amount of the value of the improvements made on said land, as here-before stated, and of the increase of the value of said land in consequence of making said improvements, be decreed a lien on said land in favor of the plaintiff, and that said land be sold to satisfy the same, and that the defendant Masterson be hereby foreclosed and barred of all interest in or to said land, except the equity of redemption of the same before such sale by payment of the amount of such lien, and that your orator shall

32

have, generally, such other and further relief, or both, as the nature of the case may require and as to your honor shall appear to
33 be just and equitable in the premises.

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said James L. Tait, —— Tait, his wife, and Branch T. Masterson, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be incerted, personally to be and appear before your honors in this honorable court and then and there to answer to all and singular the premises and to perform and abide such order and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

And your orator will ever pray.

NOTE.—The defendant, James L. Tait, above is required to answer interrogatories 1, 2, 3, 4, 5, & 6, and defendant, Branch T. Masterson, to answer interrogatory No. 7.

JAMES DURYEE STEVENSON,
JOSEPH S. CARR,
THOMAS J. DEVINE,
Complainant's Solicitors.

Endorsed: U. S. circuit court, west. district of Texas. James Reid Stewart, comp't, *vs.* B. T. Masterson & James L. Tait, defendants. In equity. No. 20. Filed Sept. 8, 1883. W. C. Robards, clerk, by N. H. Kirkland, dep. James Duryee Stevenson, Joseph S. Carr, and Thomas J. Divine, solicitors for complainants.

34 EXHIBIT "A." Filed Sept. 8th, 1883.

Memorandum of agreement between James Reid Stewart, Esqr., of Glasgow, and James L. Tait, lately of Alabama, U. S., made the 9th day of May, 1878, regarding farming transactions with Mr. John Reid Stewart, his son, in Texas, U. S.

It is hereby agreed that J. L. Tait proceed to Texas with Mr. John Reid Stewart, via New York, passages for both to be paid and the sum of one hundred and fifty pounds to be furnished J. L. Tait to pay joint expenses of travelling and living during an estimated period of 3 months, until finally located, J. L. Tait to furnish an account of said expenditure.

It is further agreed that J. L. Tait shall purchase on best terms four sections of land, amounting to 2,560 acres of land, in such place as may seem to him most advantageous, at a price not to exceed 12 *s.* per acre, the title deeds to be made out and recorded in the name of said James Reid Stewart, Esqr., and he to authorize payment of purchase-money on delivery of title deeds to the order of such party as may be named therein.

Further sums, as required for stock, dwelling-house, fencing, and other improvements, to be furnished by James Reid Stewart, Esqr.,

as required by said James L. Tait, he to give receipts, as acting for said James Reid Stewart, Esqr., the farm to be worked on
35 equal shares and profits to be equally divided between said James L. Tait and John Reid Stewart, this agreement to remain in force for a period of five years from date of purchase of land; and it is also agreed that a further tract of 2,560 acres be purchased in the names of said James L. Tait and John Reid Stewart, on a credit of 4 years, payment to be made out of realized profits; and until such additional land has been paid for, but not exceeding 5 years, James Reid Stewart, Esqr., shall not require the repayment of monies advanced, interest to be paid for said monies at the rate of six per cent. per annum, J. L. Tait to do his best as to supervision and guidance of Mr. John Reid Stewart, and is to have the management and be responsible to James Reid Stewart, Esqr., for the efficient carrying on of the business for all intromissions; the amount to be advanced by said James Reid Stewart, in all, not to exceed the sum of three thousand two hundred and fifty pounds sterling.

Glasgow, 10th May, 1878.

(Signed) JAMES L. TAIT.
(Signed) JAS. REID STEWART.

Witness:
ROBERT DUNCAN.
Witness:
GEORGE J. WYLLIE.

Endorsed: No. 20. Complainant's Exhibit "A." Filed Sept. 8, 1883. W. C. Robards, clerk, by N. H. Kirkland, dep.

36 EXHIBIT "B." Filed Sept. 8, 1883.

Grove ranch, Bexar county, in account with James L. Tait.

DR.		CREDIT.
1878.		
June 28.	To paid for said ranch, deed	$10,500 00
July 2.	" paid Judge Devine for examination of titles, giving opinion thereon, and writing out conveyance to J. R. Stewart, Esqr., check	150 00
	To paid L. E. Edwards, as an expert for examining and reporting on said land, check	50 00
	To paid T. R. Potchinsky, surveyor, for surveying said land	75 00
Sept. 4.	" paid C. G. Humberger for assisting in running out line of fence for fence contract, check	37 00
Aug. 25.	To paid T. R. Potchinsky for 2 days' survey between the line of said land and that of Judge Durries, it being alleged that we had overstepped our boundary, receipt	20 00
	To paid ditto for making out a correct map of said land	15 00
	To paid for conveyance for ditto to and from San Antonio, receipt	10 00
1879.		
June 2.	To paid T. S. Harrison, attorney-at-law, for appearing professionally before court of county commissioners to do away with a road across the property, and which was very disadvantageous, receipt	25 00
	Total cost of land	$10,882 00

Contract for house:

1878				
Aug.	12.	To paid Wait & Shepperd, contract, checks	$1,740	
Sept. Oct.	4. 21.	To paid extra for 2 bow windows		100 00
		To D. Laramour, architect, for drawing plan and superintending erection of house		100 00
37	Oct.	1. To paid J. B. Silsbe, mason & plasterer, for erecting cistern, building bath-house, & well, &c., checks		381 00
Oct.	2.	To paid S. A. Gas Co. for pump & glove for cistern, receipt		15 00
		To paid Leroux & Cosgrove for metal pipes for e-ves of house, receipt		21 75
		To paid T. E. Conner for supplying and putting up lightning rods for house		36 00
		To paid insurance on house & furniture for 3 years, policy		90 00
			$2,484 25	

Furniture:

1878.				
Sept. Oct.	15. 1.	To paid Erastus Reed, furniture dealer, for house furniture		224 23
Dec.	3.	To do. do. do.		87 50
Sept.	13.	To Wood & Co., bed and table linen, blankets, quilts, &c., receipt		106 60
Dec.	7.	Do. do. do.		19 50
Sept.	7.	To Elmendorf & Co., cutlery, plate, and general house furnishing, receipt		68 80
	13.	Gregory & Co., crockery and chamber ware, lamps, &c., receipt		63 49
Jan'y & Feb'y		To do. do. do.		17 70
		To paid J. Waite, 1 cooking stove, receipt		25 00
		To paid for 1 kitchen clock		5 00
		Total furniture	$903 52	

Fencing, slatting, gates, posts, lumber, &c.:

1870.				
Sept.	6.	To paid Martin & Co., lumber merchants		510 00
Nov.	12.	To ditto do. receipt		600 00
Dec.	31.	" " " "		635 00
Sept., Aug., & Oct.		To delivering at sundry times checks of cedar posts, as per account & receipt		
38	Aug.	—. E. Gallacher, receiver & inspector, checks & receipts		607 46
	Sept.	—. To paid E. Gallacher for receiving, buying, and inspecting posts, receipt		180 80
		To paid G. Blivins, with trammel and wagon for hauling and distributing lumber & posts on line of fence, receipt		140 60
		To paid Ch. Clark for do.		27 50
Aug.	—.	To paid James Carlin & Son, fence contractors, for work, checks on fence, gates, stable, roof of cistern and bath-house, privy, and picket fence for garden, checks & receipts		690 11
		To paid S. M. Williams and hands for work on hog-pasture fence, receipts		159 91
		To paid Elmendorf & Co. for nails, receipt		32 00
		Total fencing, building, &c.	$3,663 26	

Stock, &c., &c., %:

1878.				
July	5.	To paid H. B. Andrews for mules, ambulance, tent, wagon, and harness for do., receipt		552 68
		To paid J. D. Durse for hogs		300 00
Aug.	8.	To remitted to Corpus Cristi to J. R. Stewart & C. T. Minor for purchase of sheep		2,000 00
		To expenses of transmission, check		12 00
		To paid provisions for January, receipt		33 00
		To paid to Minor for expenses, "		60 00

1878.				
Aug.	3.	To C. E. Minor for purchasing & driving sheep, receipt		$60 00
	27.	To paid for Cotswold ram to J. H. Davis, check	580 00	
		Less sold Tarquard	160 00	
		Less sold Findlay	100 00	
				320 00
		To paid Bullock for ponies	$70	
39		Less sold L. Patterson	30	
				40 00
Oct.	14.	To paid Redmond & Miller for 1 jinny, check		40
1879.				
March	18.	" " for 1 cow with calf, receipt		15 00
Ap'l	8.	" " " do. do.		14 00
		" paid J. R. Burr, searching for stray sheep, receipt		20 00
		" paid expenses of feeding & driving hogs from Copota ranch to this place		71 60
		Total stock, &c.		$3,538 28

Deed for stock, agricultural implements, stable account, & general expenses:

1878.				
Dec.	—.	To Elmendorf & Co., plows, &c., receipt		108 48
1879.				
May	—.	Leroux & Cosgrove for harrows, &c., "		14 90
March	—.	Norton & Co., iron mangers, "		6 05
	15.	Brackett, saddlery & repairs, "		23 00
May	26.	do. do. "		6 00
1878.				
June	15.	I. Schultz, stableman, feed, &c., "		9 00
Aug.	—.	do. do. "		6 00
	15.	Bresenback, sundries, "		1 75
Sept.	1.	C. Wrase, feed, &c., "		22 75
	17.	E. Gallacher, do., "		2 80
	18.	Redmond & Miller, feed, "		13 50
Sept. & Oct.		Ed. Dillen, blacksmith, "		6 00
Oct.	1.	C. Wrase, stableman, feed, &c., "		27 50
	14.	T. Bannester, vet. surgeon, "		15 00
	23.	D. Hye for repairs on ambulance, "		3 00
		S. Seffell, blacksmith, "		13 50
		P. Die, feed, &c., "		12 50
		Valentine & Co., stationery, &c., "		4 00
Oct.	23.	C. Wrase, feed, &c., "		18 60
		T. Bannester, vet. surgeon, "		5 00
Dec.	31.	H. Kopp, hire of wagon, "		5 00
1879.				
	Jan'y	1. Redmond & Miller, feed, &c., "		13 75
40		W. E. Jack, work %, "		5 00
	March	15. P. Die, feed %, "		11 25
March	15.	P. Bell, work, "		9 50
June	2.	F. Kallyer, chemist, "		3 40
1879.				
Aug. to June.		W. Richardson, corn, "		20 00
		Moss & Bountree, oats, &c., "		26 90
		H. Wagner, oats & corn, "		6 50
		C. Glass, hay, "		63 00
		S. Bennett, tobacco for sheep, "		18 25
		Dunn, for dipping sheep, "		26 25
		J. Mann, oats & corn, "		18 25
		J. M. Harris, corn, &c., "		38 90
		A. Carle, oats, "		6 20
		J. Mann, corn, "		18 00
		J. E. Mudge, do., "		3 25
		To sundries, "		9 75
		" G. Blevins, corn, &c., "		4 60
		Total feed, implements, & general expenses		618 08

	Wages acc't:		
	C. E. Minor, 3 mos., $50	$150 00	
	Herder, 10 mos., $15	150 00	
	Stockman, 10 mos., $15	150 00	
	Cook, &c., " "	150 00	
	Washerwoman, 10 mos., $5	50 00	
	Less Hordy for loss of sheep	$60	
	Less Spencer order on J. R. Stewart	75	
		$135	365 00
	Total wages		515 00
	Provisions & house supplies:		
1879.			
June —.	C. H. Merritt, grocer, &c., receipt		54 75
	" " " "		204 05
	" " " "		180 95
41	C. H. Merrit, grocer, &c., receipt		21 48
	H. Grenett, provision m'ch't, "		10 70
	" " "		49 80
	J. Conrad, " "		5 48
	J. Carle, " "		13 70
	Buffalo grocery store, "		8 50
	W. Spencer, for butter, milk, &c., receipt		38 05
	J. Mann, do. "		7 65
	Do. do. "		5 20
	J. M. Davis, do. "		6 15
	J. Q. Adams, provisions, "		10 78
	J. Mann, do. "		14 90
	J. Q. Adams, do. "		17 25
	C. E. Minor, paid for suppl-es at ranch to workmen, &c., as per %, receipt		104 30
			$753 19

General Statement of Purchases and Expenditures, Grove Ranch, from June, 1878, to June, 1879.

1879.				
June	1.	To purchase of ranch and expenses attending do.	$10,882 00	
	2.	" building house, outhouses, garden fence, &c.	2,484 25	
	3.	Furniture for ditto	903 52	
	4.	To fencing, stabling, gates, posts, & lumber	3,663 26	
	5.	" stock, &c.	3,538 28	
	6.	" general expenses at ranch, feed, &c.	618 08	
	7.	" wages %	515 00	
	8.	" provision %	753 19	
			$23,357 58	23,357 58

Cr.

1878.				
June	26.	By proceeds of draft on J. Reed Stewart, Esqr., £2,200		10,714 00
	July 24.	Do. do. £1,600		7,760 00
42	1878.			
	Oct. 2.	By remittance, £250		1,209 75
Dec.	27.	" do. £200		1,000 00
		By sale of sheep to Findly, 650		1,350 00
				$22,033 75
		Balance due J. L. Tait		1,323 83
		4,808 acres of land, with house, fencing, and improvements, at $6 per acre		28,848 00
		By cash paid out		23,357 58
		Enhanced value of property		5,491 42

Endorsed: No. 23. U. S. cir. c't, W. D. T. Stewart *vs.* Tait & Wife. In equity. Complainant's Exhibit "B." Filed Ap'l 7, 1884. W. C. Robards, clerk.

43 *Appearance of Defendants Tait and Wife.*

From the minutes of the chancery court for the western district of Texas, at San Antonio, October 1, 1883, page 24.

* * * * * * *

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } No. 20.

OCT. 1, 1883.

On this day came James L. Tait and his wife, —— Tait, defendants in the above-styled cause, by their solicitors, Messrs. Harrison & Harrison and Diggs & Aubrey, and entered herein their appearance.

Attest: W. C. ROBARDS, *Clerk*,
By N. H. KIRKLAND, *Dep.*

Demurrer of Tait & Wife.

From minutes of the chancery court for the western district of Texas, at San Antonio, Monday, November 15th, 1883, page 25.

* * * * * * *

JAMES REID STEWART
vs.
JAMES L. TAIT *et al.* } No. 20.

NOV. 15, 1883.

In this cause come the defendants, James L. Tait and his wife, A. M. Tait, and file their demurrer to complainant's bill.

Appearance of B. T. Masterson.

From the minutes of the chancery court for the western district of Texas, at San Antonio, Monday, Dec. 3, 1883.

* * * * * * *

JAMES REID STEWART
vs.
JAMES L. TAIT and —— TAIT and BRANCH T. MASTERSON.

44 DEC. 3D, 1883.

On this day came Branch T. Masterson, one of the defendants in above-styled cause, and entered herein his appearance.

Attest: W. C. ROBARDS, *Clerk*,
By N. H. KIRKLAND, *Dep.*

Demurrer of Defendants Tait & Wife. Filed Nov. 5th, 1883.

JAMES REID STEWART
vs.
JAMES L. TAIT *et al.*
} In Chancery. No. 20.

The demurrer of James L. Tait and his wife, A. M. Tait, to the bill of complaint of James Reid Stewart, complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer shows that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or other relief from or against these defendants touching the matters contained in the said bill or any of *the* such matters.

And, for further cause of demurrer, said defendants shows that it appears by said bill that the same is exhibited against these
45 defendants and one Branch T. Masterson for several and distinct matters and causes in all, whereof it appears by said bill these defendants are not in any manner interested or concearned and in and concearning which these defendants are in no manner jointly or severally interested or connected with the said Masterson.

And, for further cause of demurrer, these defendants show that it appears by the said bill of complainant that the cause of action for the certain item of account therein set forth of twenty-six hundred and forty-three dollars accrued more than four years prior to the filing of the bill herein, and the certain other item of twenty-seven hundred dollars accrued more than two years before the filing of the bill in this cause, the said causes of action, and are barred by the statute of limitations of two and four years.

And, for further cause of demurrer, these defendants show that it appears by the said bill that the same is not verified by the oath of the said complainant or any one acting for him.

Wherefore, and for divers and other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and humbly pray the judgment of the court whether they shall be com-
46 pelled to make any further or other answer to the said bill, and they pray to be thence dismissed with their reasonable expenses and costs in this behalf sustained.

We certify that, in our opinion, the foregoing demurrer of James L. Tait and A. M. Tait, his wife, to the bill of complaint of James Reid Stewart, complainant, is well founded in law and proper to be filed in the above cause.

DIGGES & AUBREY,
HARRISON & HARRISON,
Solicitors and of Counsel for said James L. Tait & Wife, Defendants.

UNITED STATES OF AMERICA, *Western District of Texas,* } ss:

James L. Tait, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint of James Reid Stewart in this suit, and that the said demurrer is not interposed for the purpose of delaying said suit or any proceedings therein.

JAMES L. TAIT.

Sworn to and subscribed before me this 30th day of October, A. D. 1883.

W. C. ROBARDS,
U. S. Commissioner.

Endorsed: No. 20. James Reid Steward *vs.* James L. Tait *et al.* Demurrer of James L. Tait & wife. Filed Nov. 5, 1883. W. C. Robards, clerk, by N. H. Kirkland, dep. Digges & Aubrey, Harrison & Harrison, solicitors for said defendants.

47 *Case Set for Hearing at the March Term,* 1884, *on the Demurrer.*

From the minutes of the chancery court of the United States for the western district of *of* Texas, at San Antonio, page 29.

* * * * * * *

At Rule, Monday Feb'y 4, 1884.

JAMES REID STEWART *vs.* JAMES L. TAIT *et al.*

Now comes the complainants in this case, by his counsel, and sets down the demurrer of defendant, Branch T. Masterson, for hearing at the March rule day, this court, 1884.

JAMES DURYEE STEVENSON,
J. S. CARR,
THOMAS J. DEVINE,
Solicitors for Complainant.

48 *Demurrer of Branch T. Masterson. Filed Jan'y 7th,* 1884.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

JAMES REID STEWART, Complainant,
vs.
JAMES L. TAIT and Others, Defendants. } Ch. No. 20.

The demurrer of Branch T. Masterson to the bill of complaint in the above-entitled suit.

The defendant, by protestation, not confessing or acknowledging

all or any of the matters and things in said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, does demur thereto and to the jurisdiction of this honorable court, sitting in equity, and for grounds of demurrer, says—

First: That complainant hath not by his said bill made such a case nor alleged such facts as entitles him in a court of equity to any discovery or relief from this defendant touching the matters contained in the said bill or any of such matters or to give this honorable court, as a court of equity, jurisdiction to hear or determin- this cause.

Second. That it appears by said bill that the same is exhibited against the defendant and James L. Tait and A. M. Tait for
49 several and distinct matters and causes not proper to be joined in one suit and in and concearning which the defendant is in no manner whatsoever, jointly or severally, interested or liable to be sued with both or either of said other defendants.

Third. That it appears by complainant's said bill that for all matters alleged in said bill as against this defendant the complainant would have a full, complete, and adequate remedy at law.

Fourth. That said bill is not verified by the oath of complainant or any person acting for him or by any person whomsoever.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill and to all matters and things therein contained and to the relief therein sought, and he hereby prays the judgment of the court whether he shall be compelled to make any further or other answer to said bill, and he prays to be hence dismissed with his reasonable expenses and costs in this behalf sustained.

BRANCH T. MASTERSON.

I, Branch T. Masterson, do solem-ly swear that the foregoing demurrer is not interposed for delay.

BRANCH T. MASTERSON.

Sworn to and subscribed before me this seventh day of De-
50 cember, A. D. 1883, by Branch T. Masterson, known to me.
Witness my hand and official seal.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in and for the Eastern District of Texas, at the City of Galveston.

I, Branch T. Masterson, solicitor for the above-named defendant, hereby certify that the foregoing demurrer is well founded in points of law.

BRANCH T. MASTERSON.

Endorsed: No. 20. Ch'y. James Reid Stewart *vs.* James L. Tait & Others. Demurrer of Branch T. Masterson. Filed Jan'y 7, 1884. W. C. Robards, clerk, by N. H. Kirkland, dep.

51 *Judgment and Decree on the Demurrers. Filed March* 20, 1884.

March Term, 1884.

JAMES REID STEWART
vs.
JAMES L. TAIT, —— TAIT, and BRANCH T. MASTERSON. } Ch. No. 20.

Judgment of the court on the demurrers.

This cause came on to be heard this 5th day of March, A. D. 1884, upon the joint demurrer of defendants, James L. Tait and —— Tait, and upon the demurrer of defendant, Branch T. Masterson, to complainant's bill of complaint, and was argued by counsel; and thereupon, — consideration thereof, it is ordered, adjudged, and decreed as follows, viz:

That said joint demurrer of defendant-, James L. Tait and —— Tait, and demurrer of defendant, Branch T. Masterson, are well founded in point of law and are sustained, with leave to complainant to amend and reform his bill on or before the April rule day of 1884.

And it is ordered that defendants recover of complainant all costs in this cause incurred upon demurrer and in making said —— Tait a party, for which execution may issue.

E. B. TURNER, *Judge.*

Endorsed: No. 20. Ch. James Reid Stewart *vs.* James L. Tait, —— Tait, his wife, and Branch T. Masterson. Filed March 20th, 1884. W. C. Robards, clerk.

52 *Opinion of the Court. Filed April* 28, 1884.

JOHN REID STEWART
vs.
TATE and Wife and MASTERSON. } No. 20.

To the bill filed in this case a demurrer is interposed by each and all the defendants, and among the causes of demurrer is that the bill is multifarious.

The object of the bill is to—

1st. Quiet title to 4,605 acres of land which the complainant alleges that he holds and owns, to remove cloud therefrom occasioned by reason of defendant Masterson having procured patent thereon, and to be placed in possession of certain portions thereof, which, it is alleged, defendant Masterson has obtained possession of by collusion with defendant Tait.

2d. Failing in that, and in case it shall appear that Masterson has the superior title, that he, Masterson, be compelled to pay to petitioner the value of the permanent improvements placed upon the

land in dispute by the complainant in good faith, he, the complainant, having made such improvements thereon believeing that he had a good title thereto.

53 If the allegations in the bill are true, and for the purpose of this discussion they are so, I think Tate (Mr. Tate) is a proper party with Masterson. In deciding this demurrer I cannot look forward and anticipate a failure of the plaintiff to sustain his title. My intimations upon this point are for the consideration of complainant's solicitor. Mrs. Tate is not a necessary or proper party to so much of the bill as I have referred to above.

The bill seeks further an account from Mr. Tait and charges, as complainant's agent or trustee, he has used complainant's funds entrusted to him to be used for the benefit of complainant and complainant's son in purchasing for himself and wife a homestead, claiming that the same is exempt from forced sale, alleges the insolvency of Tait, and seeks to trace the funds of complainant and show that the moneys used by Tait to purchase their homestead, as it is called, were the trust funds of complainant, and seeks to establish the equitable lien of complain-t upon this homestead and to subject the same to the payment of complain-t's claim for the moneys of complainants used by Tait in the purchase of the same.

Now, this is a seperate and distinct matter from the other, having no connection therewith, and with which Masterson is in no way interested, effected, or charged; and I conclude, therefore, that the demurrer to the bill as it now stands is well taken upon the grounds of multifairiousness.

54 If complainant desires, therefore, he may reform his present bill and so frame the same as to embrace in his complaint as against Masterson and Mr. James Tate with reference to the matters relating to the title of complainant to the land in controversy as well as in the alternative of establishing a right to pay for the value of permanent improvements upon the lands made in good faith as against Masterson, if such claim he has.

That part of the bill which seeks an account as against Tate and which seeks to follow the trust fund and establish an equitable lien upon the tract of land called Tait's homestead will be and is dismissed from this bill, and if complainant deems best he can institute his suit against Tate and wife for that purpose.

The order of the court is accordingly—

Endorsed: No. 20. James Reid Stewart *vs.* Branch T. Masterson *et al.* Opinion of court. Filed April 28, 1884. W. C. Robards, clerk.

55 *Filing of Amended Bill, April 7, 1884.*

From the minutes of the rule book of the circuit court of the United States for the western district of Texas, at San Antonio, page 31.

* * * * * * *

JAMES REID STEWART, Complainant,
vs.
JAMES L. TAIT and BRANCH T. MASTERSON, Defendants. } No. 20.

MONDAY, *April* 7, 1884.

On this day came the complainant, by his solicitors, and, leave of the court having heretofore been duly had, filed this his amended bill in this cause against defendants, James L. Tait and —— Masterson, and the clerk will duly file the same in this cause.

JAMES DURYEE STEVENSON,
J. S. CARR,
THOMAS J. DEVINE,
Solicitors for Complainant.

* * * * * * *

56 *Amended Bill. Filed April 7, 1884.*

United States Circuit Court for the Western District of the State of Texas, at San Antonio, Texas. In Equity.

JAMES REID STEWART, Complainant,
against
BRANCH T. MASTERSON and JAMES L. TAIT, Defendants. } No. 20.

First amended bill.

To the judges of the circuit court of the United States for the western district of Texas:

James Reid Stewart, of the city of Glasgow, Scotland, a subject of the United Kingdom of Great Britain and Ireland, leave of the court being first had, brings this his amended bill against Branch T. Masterson, of the city of Galveston, county of Galveston, and a citizen of the State of Texas, and James L. Tait, of Bexar county, Texas, and citizens of said State, and thereupon your orator complains and says that he is an alien to the United States of America, and that the defendants are citizens thereof and of the State of Texas as aforesaid.

And your orator further shows to this court that heretofore, to wit, on the 10th day of May, 1878, at the city of Glasgow, Scotland,
57 he and the defendant, James L. Tait, entered into an agreement in writing, a copy of which was filed in this cause with

the original bill herein and marked "Complainant's Exhibit A," and hereby made a part of this bill.

That in pursuance of said agreement the defendant, James L. Tait, on the 22d day of June, A. D. 1878, purchased for your orator and in his name and went into the occupancy of and held for your orator, as his agent, for period of five years, the following-described land, situated in the county of Bexar and State of Texas, to wit: 4,605 acres of land, known as the Gasper Flores survey No. 13, and situate within the territory of the McMullen grant, hereinafter described, and bounded as follows: Beginning at a stake set for the S. W. corner of survey No. 12, on the east bank of the Medina river, thence north 4,360 varas to the S. line of survey No. 65; thence west 160 varas; thence N. 5,308 varas to the N. E. corner of this survey No. 13; thence west 2,390 varas; thence S. 10,918 varas to the N. E. bank of the Medina river for the southwest corner; thence down said river to the place of beginning; and your orator then and there became, now is, and every since has been the lawful owner of said described land and in the lawful possession thereof.

That your orator paid for said land $9,000.00, and expended in erecting a dwelling-house, stables, fences, and other improve-
58 ments thereon, in good faith, as such owner aforesaid, the sum of $6,147.51, and thereby increased the value of said land at least $3.00 per acre, making the whole value of said improvements as made by your orator the sum of $19,962.51, and that your orator has paid taxes on said land, in good faith, to the amount of about one thousand dollars.

And your orator further shows to the court that he deraigns title to said land from the sovern*g*ity of the soil; that while the government of Spain was the sovereign government of the territory of which the State of Texas is now sover-ign, and in which your orator's land is located, the said government of Spain conveyed to the Indians of San José Mission by a good and sufficient grant in fee, the following-described tract of land, situate in the counties of Medina and Bexar, in the State of Texas, and hereinafter called and referred to as the McMullen grant, to wit: Beginning at the top of Pedron Hill, thence running from the north to the south to the creek called the Almos, at the crossing thereof, where there was placed a landmark near the road leading to the precidio of the Rio Grande; thence along the road westerly to the arroya or creek Tahahena, where there was a landmark; thence turning towards the north to the road that comes from the cañon to the Loma
59 Alta, where was placed a landmark by piling stones a short distance from the landmark of Baltazar Perez, an adjoining proprietor; thence following an east course to the said Pedron Hill to the place of beginning.

And that the same was conveyed by said Indians to Refusio de la Garza and by him and said Indians to one John McMullen by good and sufficient deeds of conveyance in fee, all of which conveyances and grant are and have been of record in the archives of deeds of said county of Bexar since their respective execution and delivery, and that said grant is of record at the office of the general land

office of the State of Texas, and has been of record there for a period of over — years prior to the commencement of this suit.

That while said John McMullen was the owner of said land and in the lawful and peacible possession of the same and the actual occupancy thereof, as last described, to wit, on or about 23d day of February, 1840, one Samuel A. Maverick, being then the lawful owner of a certain Texas land certificate, No. 276, as the assignee of Gasper Flores, the grantee, of the State of Texas, located said certificate on and caused to be surveyed and located thereunder a portion of land within said McMullen grant, known as the Gasper Flores survey No. 13, which is the identical land now owned by
60 your orator and hereinbefore described, which field-notes and survey thereof are recorded in Book C No. 1 of the records of the surveyor's office of Bexar county, on page 249, and afterwards procured a patent to said land under said certificate and survey, and thereby became vested with all the title, if any, to the same that the Republic or State of Texas had then and has since acquired thereto, and then and there claimed said survey No. 13, with other surveys and locations of land within said McMullen grant, advers-ly to the good title and possession of said McMullen.

That at the same time other parties located certificates on and took patents to lands within said McMullen grant, one of whom was one John H. Herndon, and their several claims, locations, surveys, and patents became and were a cloud upon said McMullen title to said grant; that afterwards the said John McMullen conveyed said McMullen grant and delivered the possession thereof to one Bainbridge D. Howard, and he, after last said conveyance, to wit, on the 17th day of February, 1851, filed his bill in equity and commenced a suit in a Federal court of the State of Texas having jurisdiction of the parties and the subject matter, and said suit became and was styled chancery suit No. 10 on the equity docket of the circuit court of the United States for the western district of the State of
61 Texas, which suit was commenced to avoid a multiplicity of suits to set aside and annull said locations, surveys, and patents, and to remove the said cloud thereby created upon and impending over said Bainbridge D. Howard'- title to said McMullen grant and to quiet his possession therein.

That subpœnas were issued in said suit No. 10 and served upon said Samuel A. Maverick, and he became a party thereto and appeared therein, and, upon final hearing of said suit on the pleadings, orders, and proofs submitted therein, it was decreed that the heirs of Bainbridge D. Howard, who became parties plaintiffs in said suit by substitution through the death of said Howard, should have and recover of said Samuel A. Maverick and other defendants in said decree mentioned the said McMullen grant, and the said heirs' title to the same was thereby decreed to be free from all clouds cast thereon by the defendants mentioned in said suit, and that all patents, locations, and surveys owned by said defendant Maverick and others therein mentioned were null and void, and they were ordered thereby to cancel and remove the same, and the title of said heirs of Bainbridge D. Howard to said McMullen grant was thereby

adjudged to be a good title, and it was therein decreed that a ref-
62 erence be made to Mathew Hopkins, Esqr., as master in chancery in said court, to ascertain and report all material facts sought to be discovered by said complainants, and that he was thereby empowered to examine said defendants, to the end that such an additional decree might thereafter be entered therein *or* to equity might seem meet, and that in pursuance of said decree and as a part thereof said Hopkins, as master in chancery aforesaid, reported that the defendant Maverick appeared to have claimed to be the owner of certain surveys, one of which was the said Gasper Flores survey No. 13, hereinbefore described as the land of your orator, and that the same was situated within the limits of said McMullen grant as aforesaid, and that said Hopkins, as master in chancery aforesaid, on the 3d day of December, A. D. 1866, made a deed in triplicate conveying all the interest of the heirs of John McMullen, deceased, to said McMullen grant, which said deed and the said decree, of which said deed was a part, were recorded in the counties of Bexas and Medina, in the records of Bexar county for deeds, on the 5th day of August, 1867, in Book V No. 2, page 227, and the heirs of Bainbridge D. Howard acquired legal title to and possession of said McMullen
grant by inheritance and by said decree and the mandate of
63 the Supreme Court of the United States of America in said suit on appeal thereto, and that one Lorenzo Castro purchased of and from said heirs of Bainbridge D. Howard and by good and sufficient deed of conveyance in fee became the owner of said survey No. 13 and went into the actual possession thereof, and afterwards, by a good and sufficient deed of conveyance in fee, sold the same to your orator for the said sum of $9,000.00, and delivered the possession thereof to him on the 22d day of June, 1878, which said deed expressed the consideration of $10,500, and was duly recorded of that date in vol. 9, on page 150, of the records of Bexar county, as was also the said deed to said Castro duly recorded in vol. 11, on page 118, of said records, on the 21st day of June, 1878, and thus your orator's said land became and was land titled from the sovereignty of the State, evidence of the appropriation of which is and has been on the county records of said county of Bexar and in the general land office of said State, as hereinbefore stated, within and according to the provisions of section two of article XIV of the constitution of the State of Texas.

And your orator further shows to the court that the said heirs of Bainbridge D. Howard were by virtue of said decree put into the actual occupancy and possession of all the surveys and pieces of
land with said McMullen grant claimed by the defendants in
64 said suit No. 10, and that their possession of and title to the whole of said McMullen grant and of those claiming any part of the same under them was granted in them and those so holding, and that the State of Texas acquiessed in said decree and caused said grant to be marked upon the maps of the General Land Office, as made and issued by the authority of said State, by its boundaries within the said counties of Bexar and Medina, as herein and in said decree described, and that said grant was so marked upon the county

maps of each of said counties by the authority of said State, and the heirs of Bainbridge D. Howard and those holding under them and their grantors have been required by the authority of said State and county to render said land for assessment and levy of taxes, both State and county, and to pay the taxes so levied and assessed since the date of said decree and for a long time prior thereto, and that said State and the county of Bexar have levied taxes upon your orator's said land and collected the same from him as the owner thereof ever since his said purchase thereof, and he has ever been since in the actual corporal possession and occupancy thereof and the improvements, buildings, fences, and enclosures thereon, and thus your orator's appropriation of said land was evidenced by
the occupation of the owner or some person holding for him
65 under and according to the provisions of said section two of
article XIV of said constitution of the State of Texas.

And your orator further shows to the court that the defendant, Branch T. Masterson, became and was a party defendant to said suit No. 10 before the final determination of the same on appeal to the Supreme Court of the United States as the assignee in bankruptcy of the said John H. Herndon, one of the defendants therein, and had full knowledge of said decree and all the proceedings in said suit No. 10 prior and subsequent to the rendition of said decree, and had full and actual knowledge of the possession and title of the said heirs of Bainbridge D. Howard and Lorenzo Castro and of your orator's title, possession, and improvements hereinbefore stated, and that the defendant, James L. Tait, was, during the period of five years from and after the 22d day of June, 1878, holding your orator's said land and the improvements thereon as the agent of your orator, as hereinbefore stated; and your orator is advised that said decree and the conveyances hereinbefore mentioned vested in him the domain and absolute property in and to the said 4,605 acres of land hereinbefore mentioned, and of which he is and has been in possession as aforesaid, and that he and those claiming
under him would have continued and remained in the
66 actual occupation and peacible possession undisturbed and
without the necessity of vexatious litigation as to the same; but, as the facts is, the defendants, combining and confederating together and with others unknown to your orator, unlawfully and fraudulently colluded and agreed with each other that the defendant Tait should abandon your orator's said land and all the improvements thereon and deliver the same over to the said Masterson for the consideration of the sum of seven hundred and fifty dollars, to be paid by him to said Tait, with the intent to cheat, wrong, and defraud your orator out of the value of said improvements and deprive him of his title to said land and the peaceible possession and occupancy thereof and the said improvements thereon.

That defendant Masterson, with intent aforesaid and in contempt of said decree and in violation of said provision of the constitution of the State of Texas and contrary to good conscience and equity, unlawfully and fraudulently located and caused to be surveyed the whole of your orator's said land as vacant and unappropriated do-

main of the said State of Texas under and by virtue of several land certificates issued by said State and owned by said Masterson, and caused the several surveys thereof and the field-notes of said surveys to be recorded in the office of the county surveyor of the said county of Bexar at the times and by the numbers of surveys,
67 with the amount of acres, the number of the certificate, and the date of same and on the pages of the county surveyor's records, as stated and tabulated as follows, to wit:

Date of survey.	No. of survey.	No. of acres.	Grantee of certificate.	No. of certif.	Date of certificate.	County surveyor's record.
Jan'y 24, 1882	13	1,280	E. V. Dale	222	July 12, 1881	Vol. D., 15, page 588
" "	13¼	1,280	Isaac Garner	535	Aug. 4, 1881	" " " 589
" "	13½	640	Clemente Bruestick	190	July 16, 1880	" " " 590
Sept. 2, 1882	13¾	1,280	S. C. Craig	1861	Ap'l 18, 1882	" D., 16, " 606
July 26, 1882	5	1,280	Percillo Talkington	641	Aug. 25, 1881	" D., 15, " 591

And caused the same to be returned to the general land office of the said State, and procured patents to issue thereon to himself to the lands described in said surveys and field-notes thereof last above-mentioned, which includes and covers your orator's said land as aforesaid and other lands adjoining the same; and that afterwards, to wit, on or about the 1st day of August, 1882, the defendant Masterson commenced an action of ejectment or trespass to try title in the district court of Bexar county, Texas, in which he was plaintiff and said Tait defendant, to acquire the possession of your orator's said land, which suit is No. 1070 on the docket of said court; that said last-mentioned suit was commenced in pursuance of said collusive agreement between said defendants for the purpose, amongst other things, of furnishing a pretext for said Tait to abandon your orator's said property, and the same, having served its purpose, was
68 dismissed by the plaintiff, Branch T. Masterson, who paid all the costs thereof, and said Tait, in pursuance of said collusive agreement and the payment to him of the said $750 by the defendant, Branch T. Masterson, unlawfully and fraudulently surrendered and said Masterson unlawfully and fraudulently received the occupancy of said dwelling-house and that portion of your orator's said land included in said survey No. 13¼, consisting of 1,280 acres of land, and all the improvements hereinbefore mentioned, and pretends to hold the same as the owner thereof, and pretends to claim title and right of possession to the remainder of your orator's said land unoccupied by him under and by virtue of his said locations and patents thereon, though he well knew the same was absolutely void as to your orator's said title in and to said 4,605 acres of land, which your orator charges to be a fact, and alleges that said Masterson'- occupancy thereof is a holding of your orator's interest for him, but that the said patents uncancelled fixes a cloud upon your orator's

said title and depreciates the value of his said land, to your orator's irreparable injury, which cloud cannot be removed, nor can your orator be quieted in his possession without the remedial decree of this court.

And your orator further shows to this court that, in consideration of the premises and in equity and good conscience, the defendant Masterson is estopped from claiming title to your orator's said
69 land under said patents, and the State was estopped from granting the same to him, but, as the fact is, said Masterson purchased said certificates, made such surveys, and procured said patents at great costs and expenses, to an amount unknown to your orator, and in case his said patents should be cancelled by the decree of this court he would be entitled to locate said certificates on other unappropriated public domain of the State of Texas. Your orator hereby tenders to said Masterson the amount of the actual expenses incurred by him in the payment of said certificates, locating and paying said surveys, and the costs of said patents, the amount thereof to be ascertained by an accounting of the defendant Masterson for the purpose, so that, upon the payment of them, all the interest of the defendant Masterson under his said patents may be vested by the decree of this court in your orator.

And your orator further shows to this court that the defendant Tait is insolvent and unable to respond to your orator in damages for the injuries by him and said Masterson caused to your orator in the premises, and that if upon the final hearing herein the defendant Masterson'- said occupation should be determined to be a possession by him under his said patents and that his title thereunder is paramount to that of your orator, as hereinbefore set out, then the value of your orator's improvements on said land so made by
70 him in good faith, to wit, the sum of $19,962.51, would be forever and irrepa-bly lost to him, except by the remedial decree of this court adjudging the same to your orator against the said Masterson and making the same a lien upon said land.

And your orator further shows to the court that the defendants each have in their possession and under their controll certain writing, receipts, and papers in relation to the matters hereinbefore set forth, from which the truth of said matters or some of them would be made to appear, and your orator seeks from each defendant such accurate descriptions of the same and all the particulars pertaining to said agreement between them hereinbefore stated and all matters hereinbefore set forth within their respective knowledge, information, and belief; and your orator hereby waives answer under oath as to all matters hereinbefore stated, except as to such matters as are specified in certain interrogatories herein propounded.

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may, upon their several corporeal oaths, according to their best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, and perfect answers make to each of the several interrogatories hereinafter numbered and set forth,

71 as by the note hereunder written they are respectively required to answer—that is to say:

1st. Whether the erection of the dwelling-house, outhouses, garden fence, and other necessary improvements hereinbefore mentioned did not cost and were reasonably worth at the time of the erection of the same the sum of $2,484.25, and whether the erection of the said fence on the said 4,605 acres of land cost and were reasonably worth the said sum of $3,663.26, and whether said land was not increased in value by reason of said improvements in at least the sum of $3.00 per acre.

2d. State when and where defendant Masterson first spoke to defendant Tait in relation to the said 4,605 acres of land. State also the amount defendant Tait demanded as a condition of his removal from said land and the amount first offered by said Masterson, and whether the sum of $750 was not finally agreed upon.

3d. Whether the amount of $750 was not paid by defendant Masterson to defendant Tait as a bonus for his surrendering the occupancy of the dwelling-house and the improvements on the said land to Masterson, and state when and in what manner the said $750 were paid.

72 4th. Whether the defendant Masterson did not learn from J. D. Stevenson, Esqr., that James L. Tait was holding said land, 4,605 acres, for and as the agent of the complainant herein, before the commencement of said suit in district court of Bexar county, No. 1070, and before the payment of the said $750.

5th. Whether said Masterson paid said Tait's expenses or any part of the same incurred by him in said suit No. 1070 in district court of Bexar county, and whether said expenses were included in the said $750, and whether said Masterson did not pay all the costs in said suit No. 1074 and dismiss the same in pursuance of an agreement between him and said Tait to let said Masterson into the occupancy of said dwelling-house and improvements.

6th. Whether said Masterson had any knowledge of the boundaries of the said McMullen grant, and what knowledge he had of the same, and *if* the same being mapped out and displayed upon the county maps of Bexar and Medina counties and upon the maps issued by the State of Texas through its general land office, and whether said McMullen grant was not described on said maps as stated herein, and whether he had any knowledge of the said decree in said suit No. 10 prior and subsequent to the rendition

73 thereof, and that your orator's grantors or those under whom he claimed acquired title to and possession of the said 4,605 acres of land were put into the actual possession of said McMullen grant by process under said decree, and that the said 4,605 acres of land was included in said grant, and that those from and through whom your orator claimed were required to pay the State and county taxes on the said 4,605 acres of land by the officers of said State and county of Bexar, and that your orator had put valuable improvements upon said land.

And to the end that an account may be stated by said Masterson as to the cost incurred by him in the purchase of his said certifi-

cates, the location and running of the surveys, and the procurement of said patents on said 4,605 acres of land, and that the title so acquired by him, if any, be by a decree of this court vested in your orator upon the payment of the amount so expended by said Masterson, and that the said cloud upon your orator's said title be removed and the said Masterson forever barred of all interest in and to said land or any part thereof, and that your orator be quieted in his title and the peacible possession thereof and be decreed to be the owner thereof, and the defendants, having heretofore appeared in this cause, be required to answer all and singular the premises.

74 And your orator prays, in the alternative, that in case the title to said 4,605 acres be upon final hearing found to be in defendant Masterson, then and in that case your orator prays that amount of the value of the improvements made on said land as aforesaid be adjudged to the complainant against said Masterson, and that the amount thereof as adjudged be a lien on said land, and that the same be sold to satisfy the said lien, and that said Masterson be foreclosed and barred of all interest in and to the said land, except the equity of redemption before sale by the payment of the amount of such lien, and that your orator shall have, generally, such other or further relief, or both, as the nature of the case may require and as shall to your honors appear to be just and equitable in the premises; and that the defendants be required to answer all and singular the premises as aforesaid, and subpœnas having been served and they each appearing as aforesaid, and that they abide such orders and decrees therein as to this honorable court shall seem agreeable to equity and good conscience.

And your orator will ever pray.

The defendant Masterson above is required to answer interrogatories Nos. 3, 4, & 6, inclusive, and defendant, James L. Tait, interrogatory 1, and interrogatory 2 & 5 are to answered by both defendants.

JAMES DURYEE STEVENSON,
MASON & CARR, AND
THOMAS J. DEVINE,
For Complainant.

75 EXHIBIT "A." Filed Sept. 8th, 1883.

Memorandum of agreement between James Reid Stewart, Esqr., of Glasgow, and James L. Tait, lately of Alabama, U. S., made this 9th day of May, 1878, regarding farming transactions with Mr. John Reid Stewart, his son, in Texas, U. S.

It is hereby agreed that J. L. Tait proceed to Texas with Mr. John Reid Stewart, via New York, passages for both to be paid and the sum of one hundred and fifty pounds to be furnished J. L. Tait to pay joint expenses of travelling and living during an estimated period of 3 months, until finally located, J. L. Tait to furnish an account of said expenditure.

It is further agreed that J. L. Tait shall purchase on best terms four sections of land, amounting to 2,560 acres, in such place as may seem to him most advantageous, at a price not to exceed 12 s. per acre, the title deeds to be made out and recorded in the name of said James Reid Stewart, Esqr., and he to authorize payment of purchase-money on delivery of title deeds to the order of such party as may be named therein.

Further sums, as may be required for stock, dwelling-house, fencing, and other improvements, to be furnished by James Reid Stewart, Esqr., as required by said James L. Tait, he to give receipts, as act-
76 ing for said James Reid Stewart, Esqr., the farm to be worked on equal shares and profits to be equally divided between said James L. Tait and John Reid Stewart, this agreement to remain in force for a period of five years from date of purchase of land; and it is also agreed that a further tract of 2,560 acres be purchased in the names of said James L. Tait and John Reid Stewart, on a credit of four years, payment to be made out of realized profits; and until such additional land has been paid for, but not exceeding five years, James Reid Stewart, Esqr., shall not require the repayment of monies advanced, interest to be paid for said monies at the rate of six per cent. per annum, J. L. Tait to do his best as to supervision and guidance of Mr. John Reid Stewart, and is to have the management and be responsible to James Reid Stewart, Esqr., for the efficient carrying out of all intromissions; the amount to be advanced by said James Reid Stewart, in all, not to exceed the sum of three thousand two hundred and fifty pounds sterling.

Glasgow, 10th May, 1878.

(Signed) JAMES L. TAIT.
(Signed) JAS. REID STEWART.

Witness:
ROBERT DUNCAN.
Witness:
GEORGE J. WYLLIE.

Endorsed: No. 20. Complainant's Exhibit "A." Filed Sept. 8th, 1883. W. C. Robards, clerk, by N. H. Kirkland, dep.

77 *Failure of J. L. Tait to Plead, Answer, or Demur.*

From the minutes of the circuit court of the United States for the western district of Texas, at San Antonio, Monday, May 5, 1884, page 34.

* * * * * * *

MONDAY, *May* 5, 1884.

Be it remembered that on the 5th day of May, A. D. 1884, being the first Monday and rule day in said month, the following proceedings were had in the circuit court of the United States, west. district of Texas, before W. C. Robards, clerk of said court, at San Antonio, to wit:

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } No. 20.

Whereas, by leave of the court first had and obtained in this behalf, the complainant, James Reid Stewart, on the rule day in April, A. D. 1884, filed herein his amended bill, which was duly noted on the record, and it appearing that the defendant, James L. Tait, being in court has failed to plead, answer, or demur to complainant's bill within the time he was required so to do by the rules in equity.

It is now ordered, as of course, that said bill be taken as confessed as to said defendant, James L. Tait, and that this cause be proceeded in henceforth *exparte* as to said Tait.

W. C. ROBARDS,
Clerk of said Court.

78 *Filing of Defendant Masterson'- Demurrer to Original Bill.*

From the minutes of the circuit court of the United States for the western district of Texas, at San Antonio, page 34.

* * * * * * *

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } No. 20.

On this 23d day of April, A. D. 1884, came the defendant, Branch T. Marterson, and filed herein his demurrer to complainant's original bill of complaint.

Demurrer of Defendant Set for Trial July Rule Day.

* * * * * * *

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } No. 20.

MONDAY, *June* 2d, 1884.

On this day came the complainant, by his counsel, and sets down the demurrer of Branch T. Masterson (entered in the rule book on May rule day last past) for hearing at the July rule day, 1884.

JAMES DURYEE STEVENSON,
MASON & CARR,
THOMAS J. DEVINE,
Solicitors for Complainant.

79 *Demurrer of Branch T. Masterson to Amended Bill of Complaint. Filed April 23d, 1884.*

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } Ch'y No. 20.

The demurrer of Branch T. Masterson to the amended bill of complaint filed in the above-entitled cause on the rule day of April, A. D. 1884, and to the original bill as amended by said amended bill.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said amended bill or in said original bill as amended by said amended bill to be true in such manner and form as the same are therein and thereby set forth and alleged, demures thereto and to the jurisdiction of this honorable court, sitting in equity, and, for grounds of demurrer, says—

1st. That said amended bill is exhibited in contempt of the decision of this honorable court made on the hearing of and sustaining the demurrer heretofore interposed to said original bill, and sets up substantially matters against which this court sustained said demurrer, in this, that it appeared by said original bill and cause
80 No. 10, in equity, therein referred to and stated as a part of complainant'- title, and the exhibits, order, and decree in said cause No. 10 (though the same was insufficiently and *and* defectively set out in the original bill herein as title), that complainant'- pretended title to the land sued for is based on the so-called McMullen grant, which the supreme court of Texas, in the case of McMullen *vs.* Hodge, in 5th Texas Report-, and in the case of Howard *vs.* McKenzie, in 54 Texas Reports, declared to be void and the land within the so-called McMullen grant to be vacant public domain, and said decission of McMullen *vs.* Hodge was rendered long prior to the alleged purchase by complainant, and said McMullen, against whom it was rendered, is a remote vendor of complainant, and complainant'- claim is by, through, and under him, to which bill this defendant'- demurrer was sustained, and said complainant has not by said amended bill set up any other or different title or claim than the worthless and void one defectively and insufficiently set up in said original bill, nor has he, by filing copies of his title papers as exhibits or otherwise, set out any more fully or sufficiently said alleged chain of title, and whatever pretended or alleged title is set up in said original or amended bill is so defectively and insufficiently set up that it does not properly inform the defendant of complainant's chain of title nor entitle complainant to any answer from this defendant.

81 That complainant has not so amended his bill as by proper and pertenant allegations to entitle him to assert a claim for the value of improvements claimed to have been placed on the land described in the bill.

2d. That complainant hath not, by his said amended bill nor by his said original bill as amended, made such a case nor alleged such facts as will entitle him in a court of equity to any discovery or relief from this defendant touching the matters contained in said amended bill and original bill as amended or any such matters, or to give this honorable court, as a court of equity, jurisdiction to hear or determine this cause.

3d. That it appears by said amended bill that James L. Tait is made defendant therein, and that he is not alleged to have any interest in the matters concearning which complainant seeks a decree against this defendant, and no relief is sought as against said Tait and no facts are alleged that would entitle complainant to maintain this suit against this defendant and said Tait, and said bill is demurred to because of misjoinder of parties defendant.

4th. That it appears by complainant's said amended bill
82 and original bill as *as* amended that for all matters alleged therein against this defendant if complainant has any grounds for action or suit he has a full, complete, & adequate remedy at law.

5th. Wherefore, and for divers other good causes of demurrer appearing in said amended bill and said original bill as amended, this defendant doth demur thereto and to all matters and things therein contained and to the relief therein sought, and he humbly prays the judgment of the court whether he shall be compelled to make any further or other answer to said bill, and he prays to be henced dismissed with his reasonable expenses and costs in this behalf sustained.

BRANCH T. MASTERSON.

I, Branch T. Masterson, do solemnly swear that the foregoing demurrer is not interposed for delay.

BRANCH T. MASTERSON.

Sworn to and subscribed before me by Branch T. Masterson this 23d day of April, A. D. 1884.

GEORGE PASCHAL,
U. S. Commissioner, W. D. Texas.

I hereby certify that, in my opinion, the above demurrer is well founded in point of law.

BRANCH T. MASTERTON,
Counsel for above Defendant.

Endorsed: No. 20. John Reid Stewart *vs.* Branch T. Masterson *et al.* Demurrer of Branch T. Masterson. Filed April 23d, 1884. W. C. Robards, clerk.

83 *Decree.*

At a regular term of the circuit court of the United States for the western district of Texas, in the fifth circuit, held at the court-house of said court, in the city of San Antonio, on the 7th day — October, in the year of our Lord one thousand eight hundred and eighty-four.

JAMES REID STEWART
vs.
BRANCH T. MASTERSON *et al.* } In Chancery. No. 20.

This cause having come on to be heard upon the bill of complaint and amended bill herein and the demurrer thereto of the defendant, Branch T. Masterson, and the argument of counsel thereon being heard, it is the opinion of the court that the said defendant's said demurrer is well taken, and that the same should be sustained unless the complainant should desire to retain that part of his said bill in which he seeks to recover compensation for improvements, and amend the same as to that part, the allegations in the present bill being insufficient to maintain complainant's claim for improvements; and the complainant having declined to make such amendment and retain that part of his said bill, therefore, upon con-
84 sideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the aforesaid demurrer of the said defendant Masterson be, and the same is hereby, sustained, and that the complainant's bill of complaint as against the said Masterson be, and the same is hereby, dismissed with costs to the said defendant, to be taxed.

Whereupon the complainant, in open court, makes application for appeal to the Supreme Court, which application is hereby granted.

Endorsed: No. 20. In chancery. James Reid Stewart *vs.* Branch T. Masterson *et al.* Decree. Filed Nov. 7, 1884. W. C. Robards, clerk, by D. West, dep.

85 *Clerk's Certificate.*

I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify that the foregoing is a true and correct transcript of all the proceedings had in said court in case No. 20 on the chancery docket of said court, wherein James Reid Stewart is plaintiff and Branch T. Masterson *et al.* are defendants.

Given under my hand — the seal of said circuit court of the United States for the western district of Texas, at San Antonio, this 5th day of October, A. D. 1885.

W. C. ROBARDS,
Clerk United States Circuit Court,
Western District of Texas, at San Antonio.

86 *Appeal Bond.*

Supreme Court of the United States.

JAMES REID STEWART, Appellant,
against
BRANCH T. MASTERSON and JAMES L. TAIT, Appellees & Respondents. } No. 20.

Know all men by these presents that we, James Reid Stewart, of Glasgow, Scotland, as principal and appellant in above-styled suit, and John Withers, of the county of Bexar, State of Texas, and John Buchanan, of the county of Karnes, State of Texas, as sureties, are held and firmly bound unto Branch *Branch* T. Masterson, of the county Galveston and State of Texas, and James L. Tait, of Bexar county, said State, in the sum of two hundred dollars, to be paid to the said Branch T. Masterson and James L. Tait, their executors & administrators; to which payment, well & truly to be made, we bind ourselves and each of us, jointly & severally, and our & each of our heirs, executors, & administrators, firmly by these presents.

87 Sealed with our seals. Dated this 10th day of October, 1885.

Whereas the above-named James Reid Stewart has appealed to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the western district of the State of Texas, sitting at San Antonio, in said State:

Now, therefor-, the condition of this obligation is such that if the above-named James Reid Stewart, appellant, shall prosecute his said appeal to effect and answer all costs if he shall fail to make his plea good, then this obligation shall be void; otherwise to remain in full force & virtue.

JAMES REID STEWART,
By JAMES DURYEE STEVENSON,
His Attorney and of Counsel for Appellant.
JNO. WITHERS.
JOHN BUCHANAN.

Sealed & delivered in presence of—
WM. MASTER, *Witness.*

Approved—
E. B. TURNER, *U. S. Judge.*

88 [Endorsed:] No. 20. James Reid Stewart *vs.* Branch T. Masterson *et al.* Appeal bond. Filed Oct. 10, 1885. W. C. Robards, cl'k, by D. West, deputy.

89 *Citation.*

Supreme Court of the United States.

JAMES REID STEWART, Appellant,
against
BRANCH T. MASTERSON and JAMES L. TAIT, Appellees.

By the Honorable E. B. Turner, holding the circuit court of the United States for the western district of the State of Texas, to Branch T. Masterson:

Whereas James Reid Stewart has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the western district of Texas, made in favor of you, Branch T. Masterson, and has filed the security as required by law, you are therefore hereby cited to appear before the said court, at the city of Washington, on the 13th day of October next, being the 2nd Monday of October, A. D. 1886, to do and to receive what may appertain to *parties* to be done in the premises.

Given under my hand, at the city of San Antonio, in the western district of Texas, in the 5th circuit, this 2nd day of November, in the year of our Lord one thousand eight hundred and eighty-five.

{ The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio. }

E. B. TURNER,
U. S. Judge.

Attest: W. C. ROBARDS, *Clerk.*

90 [Endorsed:] No. —. Supreme Court United States. James Reid Stewart *vs.* Branch T. Masterson *et al.* Citation. J. D. Stevenson, T. J. Devine, and J. S. Carr, solicitors for appellant.

Marshal's Return.

Came to hand on the 2nd day of November, A. D. 1885, and executed on the 17th day of Feb'y, A. D. 1886, by delivering to Branch T. Masterson in person a true and correct copy of this citation.

S. D. JACKMAN,
U. S. Marshal.
By D. WEST, *Deputy.*

Endorsed on cover: W. Texas C. C. U. S. No. 287. James Reid Stewart, appellant, *vs.* Branch T. Masterson. Filed June 11, 1886.

Know all men by these presents that we, James Reid Stewart, of Glasgow, Scotland, and John Withers and L. W. Madarasz, both of San Antonio, Bexar county, Texas, are held and firmly bound unto Branch T. Masterson, of the county of Galveston, State of Texas, and James L. Tait, of Bexar county, in State of Texas aforesaid, in the full and just sum of five hundred dollars, to be paid to the said Branch T. Masterson and James L. Tait, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a regular term of the circuit court of the United States for the western district of Texas, in a suit depending in said court between James Reid Stewart, complainant, and said Branch T. Masterson and James L. Tait, respondents, a decree was rendered against the said James Reid Stewart in favor of said respondents, Masterson and Tait; and the said James Reid Stewart having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit and a citation, directed to the said Branch T. Masterson (a decree *pro confesso* having been taken against said Tait unopened and unappealed from), citing and admonishing said Masterson to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October then next:

Now, the condition of the above obligation is such that if the said James Reid Stewart, appellant and complainant, shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES REID STEWART, [SEAL.]
By JAMES DURYEE STEVENSON,
His Attorney and of Counsel for App't.
JNO. WITHERS. [SEAL.]
L. W. MADARASZ. [SEAL.]

Sealed and delivered in presence of—
Witness:
A. W. MORISON.
J. D. DOBBIN.
J. D. DOBBIN.

Approved by—
L. Q. C. LAMAR,
Associate Justice U. S. Supreme Court.

8th March, 1888.

SAN ANTONIO, TEXAS, *Febr'y* 25, 1888.

I know that the sureties to the within bond are financially solvent and abundantly good for the penalty thereof.

W. C. ROBARDS,
Clerk U. S. Circuit Court.

[Endorsed:] U. S. Supreme Court. No. 571. James R. Stewart, appellant, *vs.* Branch T. Masterson, appellee. Bond of appellant on appeal. C. C. Lancaster, att'y for appellant.

[Endorsed:] Supreme Court U. S. 1887, October term. No. 287. James Reid Stewart, app't, *vs.* Branch T. Masterson. Bond. [Stamped:] Office Supreme Court U. S. Filed Mar. 12, 1888. James H. McKenney, clerk.